

ILLINOIS POLLUTION CONTROL BOARD
February 9, 1984

IN THE MATTER OF:)
)
THE PETITION OF THE CALESBURG) R80-16
SANITARY DISTRICT TO AMEND)
REGULATIONS)

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a December 29, 1983 motion for reconsideration, filed by the Illinois Environmental Protection Agency (Agency), of the Board's November 18, 1983 Proposed Rule/Second Notice Order. The Agency contends that changes made from the first Notice Order of June 2, 1983 "significantly lessen the ability of the Board and the Agency to enforce these rules." The Galesburg Sanitary District (GSD) responded on January 12, 1984. Since the second notice period has not commenced, and since serious issues have been raised, the Board can, and hereby does, grant reconsideration.

The Agency first argues that "the Board changed the language of Section 304.207(b)(1) [from the First Notice Order] so that compliance with the dissolved oxygen standard was only required downstream from the treatment plant" and that the Board has "by implication" deleted the dissolved oxygen standard upstream of the plant. That is not true. Section 304.207(b)(1) requires that GSD assure compliance with the downstream dissolved oxygen limitations by November 1, 1984, in order to qualify for relaxed biochemical oxygen demand (BOD) and suspended solids (SS) limitations. It does not exempt GSD from the dissolved oxygen limitations of Section 302.206 with regard to any reach of Cedar Creek. Rather, the rule is based upon the recognition that upstream dissolved oxygen violations may result from factors over which the GSD has no control. If, however, dissolved oxygen violations can be found to result from GSD's activities, it is subject to enforcement. The Board notes, that there is language in the Second Notice Order preceeding the rule which unfortunately leads to the Agency's conclusion. Therefore, while Section 304.207(b)(1) will not be modified in response to the motion for reconsideration, the Board will clarify the intent of the rule in its Final Opinion.

Second, the Agency objects to changes in Section 304.207(b)(2), apparently taking the position that under its present wording the GSD could avoid the finding of a violation under Section 306.305(a) by proving that there are sewer backups. Such is not the intent. Rather than establishing basement backups as a defense to an allegation of a Section 306.305(a) violation, basement backups

are specifically disallowed if the GSD is to be subject to relaxed deoxygenating waste general effluent standards. The Board did not conclude, and the proposed rule does not state, that the GSD should be exempted from Section 306.305(a). In the Proposed Opinion of June 2, 1983, the Board's finding of substantial compliance was based on the GSD's own evidence that over 99% compliance could be achieved and that the degree of environmental harm which could be expected from such minor non-compliance would not justify the large expenditure necessary to attain 100% compliance. If the GSD's evidence is borne out, no violation of Section 306.305(a) could be found against it. However, if the modifications do not result in substantial compliance, a violation could be proven. Some of those modifications are reflected in the conditions of Section 304.207(b) which are not included as alternative combined sewer overflow rules, but rather are intended to give added assurance that the GSD will take the steps which are necessary to achieve substantial compliance with those rules.

Further, no relief has been granted to the GSD from the water quality standards, and if overflows from the GSD's sewer system can be proven to cause or contribute to a violation of those standards, an enforcement action would be appropriate.

The intent of Section 304.207(b)(2) will also be clarified in the Final Opinion in this matter. Therefore, the language of Section 304.207 as proposed in the Second Notice Order is affirmed, but the language of the Proposed Opinion will be modified to clarify the Board's intent in the Final Opinion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of February, 1984 by a vote of 7-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board