

ILLINOIS POLLUTION CONTROL BOARD
November 5, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-62
)
 DAVENPORT PACKING COMPANY, INC.,)
)
 Respondent.)

MR. WILLIAM E. BLAKNEY, Assistant Attorney General, appeared on behalf of Complainant.

MR. JOHN L. PARKER appeared on behalf of Respondent Davenport Packing Company, Inc.; MR. ROBERT G. SCOTT appeared on behalf of VILLAGE OF MILAN.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On March 8, 1978 Complainant filed this action against Davenport Packing Company, Inc. (Davenport) alleging violations of Rules 953(a) and 701(a) of Chapter 3: Water Pollution Rules and Regulations, and consequential violations of Sections 12(a) and (b) of the Illinois Environmental Protection Act (Act). On March 15, 1979 the Board granted Davenport's motion to add the Village of Milan, in Rock Island County, as party Respondent. Although discovery was initiated in early April of 1978, and hearing was first set for May 25, 1978, no hearings were held until September 9-11, 1980, almost two and one-half years later. The Board's docket contains thirteen motions to continue hearing. The post-hearing motion to dismiss Milan as party Respondent is granted since no complaint alleging violations by Milan exists in the record. The Board has received no public comment in this matter.

Davenport is located within the Village of Milan, Illinois and discharges its wastewater into Milan's sewer system. Davenport's facility processes cattle, beginning with live animals and ending with dressed carcasses which are further processed by others. The process includes slaughtering, bleeding, skinning, and dismemberment. During this process, blood and solids, excluding internal organs, are washed into a collection basin along with other wastewater. The collection basin acts as a settling and skimming tank, the discharge from which is directed to the Milan sewer system. Each morning the basin is pumped down and discharged into a rotating strainer. The strainer retains

solids and congealed grease, if any, for recovery as byproduct by Davenport; the remainder is discharged to the Milan sewers.

The Agency alleges that wastewater was discharged by Davenport into the Milan sewer system at a flow of over 50,000 gallons per average workday since December 31, 1972. This wastewater is alleged to contain toxic and other pollutants and to contribute over 15% of both hydraulic flow loading and biological loading of the Milan sanitary treatment plant. During a period from October, 1976 through June, 1977, Milan's sanitary treatment plant effluent allegedly exceeded the concentrations of biochemical oxygen demand (BOD) and total suspended solids (TSS) allowed by the State. The Agency alleges that these excursions were caused by Davenport's alleged violation of Rule 701(a) of Chapter 3, e.g., that Davenport's wastes discharged to sewers owned by the Village of Milan are prohibited because, by reason of their nature or quality, they may cause the plant's effluent to violate applicable effluent standards. In addition, the Agency alleges that Davenport is a major contributing industry pursuant to Rule 104 of Chapter 3 of the Board's Regulations, and as such, operated pretreatment equipment without having first been issued an operating permit by the Agency.

The first issue to be considered by the Board is the allegation that Milan's excursions were caused by the type and manner of discharge by Davenport to the sewer. There is some question as to precisely what standards Milan was to meet during the period of the complaint. Board Rule 404(f) calls for a limitation of 4 mg/l BOD and 5 mg/l TSS. The Board recently repealed Rule 404(f) with respect to the 4/5 standard, leaving in its place Rule 404(c) which calls for a 10/12 standard. Milan's NPDES permit contains limitations of 10 mg/l BOD and 15 mg/l TSS and the 4/5 limits under certain conditions. In addition, one of the permits was modified by an Enforcement Schedule Compliance Letter issued by the United States Environmental Protection Agency setting limitations of 50 mg/l BOD and 50/mg/l TSS. Fortunately, the Board need not make a determination as to which standard applied in this case since there is ample evidence that Milan exceeded even the most generous of the limitations cited (R.368; Complainant's Group Exhibit 16).

Milan's treatment plant was designed for a hydraulic discharge of 412,500 gallons per day from Davenport out of a total loading of 1.7 million gallons per day for the entire treatment plant (R.626). Complainant's Exhibit 7 contains certain results of a study made by a consultant for Milan concerning the hydraulic and organic loading of Milan's sanitary treatment plant by the City and by Davenport. Although part of the data falls outside of the time period encompassed by this Complaint, the data ascertained during the first eight work days of the study is competent. That data indicates an average workday hydraulic flow of approximately 255,000 gallons or about 18.8% of the total flow (Complainant's Exhibit 7). Considering those figures and the fact that the

basement of Davenport's plant began flooding within an hour after Davenport's sewer had been blocked leads the Board to find that Davenport discharged in excess of 50,000 gallons per day to Milan's sewers, contributing in excess of 15% of Milan's total hydraulic load (R. 391-4; Complainant's Exhibit 7).

The Plant Superintendent of Milan's sewage treatment plant testified that Davenport is the only major industry which discharges to the Village sewer system (R.351, 366). According to the record, Davenport routinely pumps the waste from its collection basin through a rotary screen and into the sewer system during a three-to-four hour period each workday mornings. The purpose of this process is to recover solids from the collection basin for further processing. A sudden sustained increase in loading on the sewage treatment plant may well load the treatment plant past its hour-by-hour capacity. Therefore, since material from Davenport is discharged to the treatment plant as described above, the treatment plant might experience higher total levels of discharge. The competent portion of Complainant's Exhibit 7 shows an average percent flow discharge from Davenport Packing Company of 18.8% of the total flow to Milan, an average of 59.1% of the total BOD loading, and an average 43.3% of the TSS loading, all based on data collected on workdays only. The foregoing averages compare favorably with those averages indicated for the entire twenty-eight day period, some of which was collected subsequent to the filing of the Complaint herein. Testimony concerning the "reddish brown coloration" of the raw sewage entering Milan's treatment plant is further indication of the effect of Davenport's discharge upon the treatment plant (R.73-75).

Davenport has made no effort to present witnesses in rebuttal or in mitigation of the evidence presented to support the Complaint but rather attempted to show by cross-examination and argument that Complainant had failed to present a prima facie case. In addition, Davenport argues that the problem lies with Milan and its treatment plant. The Board disagrees. Davenport cannot discharge its effluent to the sewer system of the City of Milan in any manner it desires and then claim that the problem is with Milan's inability to cope with the discharge. This is precisely the situation that the Board addressed when it promulgated Rule 701 which prohibits the discharge of wastes to any sewer owned by any municipality which, by reason of its nature or quantity, may cause the effluent from the treatment works to violate applicable effluent standards. The Board finds Davenport in violation of Rule 701(a) and 12(a) of the Act. Therefore, based on the design criteria and discharge amounts supporting the violation of Rule 701(a) and 12(a) of the Act, the Board further finds that Davenport is a major contributing industry as defined by Rule 104 of Chapter 3: Water Pollution.

The other issues the Board must consider in this case is whether or not the collection basin and the rotary screen operated by Davenport from which it discharges its effluent to the Milan sewer system constitutes a pretreatment system and if so, does it

require an operating permit. A pretreatment works is a treatment works designed and intended for treatment of wastewater from a major contributing industry. The Board has previously found that Davenport is a major contributing industry. Davenport argues that the only purpose for the collection basin is to collect the large, heavy material for the purpose of recovery. In support of their argument, Davenport indicates that the collection basin is pumped down through the rotating screen once each morning, and the material collected in the rotating screen is recovered and reprocessed. Davenport also appears to argue that there is no discharge from the collection basin directly to the sewer. The Agency agrees that the collection basin and rotating screen situated just prior to discharge to Milan's sewer system was intended to and does allow settling of large and heavy masses which result from the slaughter operation. However, the Agency claims that without this collection basin, this material would be and has been discharged directly into Milan's sewage system, could overload the BOD and TSS amounts at the Milan treatment plant, could block the Milan sewage system, and could cause Davenport's basement to flood.

The Board must reject Davenport's argument. Since Davenport presented no witnesses, there is only the Agency's evidence of such a discharge: the hydraulic load discharged to Milan's sewer system; the photographs of the obviously unscreened material contained in Davenport's effluent and the fact that Davenport's basement began flooding within an hour after its sewer was blocked. This indicates to the Board that there was indeed unscreened effluent discharging from Davenport's collection basin notwithstanding the fact that the Agency did not present a witness who had actually seen the discharge (Complainant's Exhibits 17, 18 and 19; R.388-394). The Board finds that Davenport's settling tank is a pretreatment works. The fact that Davenport recovers the solids trapped in the tank and reprocesses them is of no consequence. The solids would have to be recovered and disposed of in some manner, such as a landfill, in any event.

Having determined that Davenport operates a pretreatment system, the Board must address the possibility of an exemption from the operating permit requirement. Board Rule 953(d) expressly excludes from the requirement of an operating permit any pretreatment works that will not discharge: toxic pollutants: 15% or more of the total hydraulic flow received by the treatment works; or 15% or more of the total biological loading received by the treatment works as measured by BOD. Davenport argues that all three of these conditions must be met before an operating permit is required. Thus, it states, in the absence of a showing that Davenport has discharged toxic pollutants, there was no operating permit requirement. The obvious corollary to that argument is that unless a pretreatment plant discharges more than 15% of the total BOD loading and total hydraulic flow received by the treatment works, it need not have a pretreatment permit regardless of the amount or type of toxic pollutants it discharges. Davenport's

interpretation of Rule 953(d) is patently absurd. The Board holds that a pretreatment works requires an operating permit if any one of the three conditions stated exists. The Board has previously found that Davenport discharges more than 15% of both the hydraulic flow and the biological loading received by Milan's treatment works and, therefore, an operating permit for the pretreatment works is required. The Board finds Davenport in violation of Rule 953(a) of the Board's Water Regulations and 12(b) of the Act.

It is apparent that Davenport must modify its procedures and/or its equipment to alleviate its loading on the Milan sewage treatment plant so that the treatment plant might achieve compliance with the Board's regulations. To that end, the Board will order Davenport to develop a plan for pretreatment of its discharge to be presented to the Agency within 90 days of the date of this Order. Davenport shall also obtain the permits required by its pretreatment works from the Agency.

In considering a penalty, the Board must consider the factors listed under Section 33(c) of the Environmental Protection Act. There appears to be no issue with regard to the social and economic value of Davenport or the suitability or unsuitability of the pollution source to the area in which it is located or the technical practicability or economic reasonableness of reducing or eliminating the discharge. With regard to the character and degree of injury to or interference with the protection of the health, general welfare, and physical property of the people, the Board finds that Davenport's discharges have interfered with Milan's ability to control the effluent from its sanitary treatment plant. In addition, the record indicates that Davenport has been reticent in addressing the problem (Complainant's Exhibit 1, Respondent's Exhibit 1). The Board shall therefore assess a penalty of \$2,000 against Davenport in order to further the purposes of the Illinois Environmental Protection Act.

This Opinion constitutes the Board's finding of facts and conclusions in this matter.

ORDER

1. Davenport Packing Company, Inc. is found in violation of Rules 701(a) and 953(a) of the Board's Regulations, Chapter 3: Water Pollution and Sections 12(a) and (b) of the Illinois Environmental Protection Act.

2. Within 90 days of the date of this Order, Davenport Packing Company, Inc. shall present to the Illinois Environmental Protection Agency for its acceptance a proposed plan to correct the violation of Rule 701(a) found in paragraph 1 above.

3. Davenport shall acquire a Permit from the Agency for its pretreatment works.

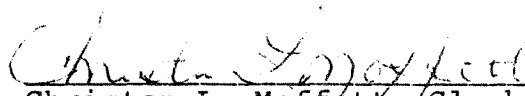
4. Davenport Packing Company, Inc. shall pay the penalty of \$2,000 for the violations indicated in paragraph 1 above, said penalty to be sent to Fiscal Service Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

5. The City of Milan is hereby dismissed from this action.

6. The Board shall retain jurisdiction in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of November, 1981 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board