

ILLINOIS POLLUTION CONTROL BOARD  
April 29, 1982

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 78-226  
 )  
MODERN PLATING CORPORATION, )  
 )  
Respondent. )

JOSEPH A. DRAZEK, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

THOMAS W. WEAVER, SIDLEY & AUSTIN, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the August 21, 1978 Complaint brought by the Illinois Environmental Protection Agency (Agency). On December 13, 1979, the Agency filed an Amended Complaint which alleged that the Respondent discharged effluents from its wastewater treatment plant into the Pecatonica River which contained excessive levels of cadmium, chromium (hexavalent), copper, cyanide, iron, zinc, mercury, and nickel. This Amended Complaint also alleged that the Modern Plating Corporation (MPC) failed to: (1) provide the best degree of wastewater treatment; (2) take all reasonable measures to prevent spillage of contaminants from causing water pollution; (3) properly maintain and operate its wastewater treatment equipment; (4) comply with the water sampling and record keeping requirements of its NPDES Permit; (5) promptly notify the Agency about its noncompliance with daily maximum effluent limitations; and (6) file adequate discharge monitoring reports in violation of the terms and conditions of its NPDES Permit, Rules 401(a), 401(c), 408(a), 601(b), and 901 of Chapter 3: Water Pollution Regulations (Chapter 3) and Sections 12(a), 12(b), and 12(f) of the Illinois Environmental Protection Act (Act).

On June 18, 1981, a hearing was held in which the proposed First Stipulation was the only substantive matter introduced into the record. The parties filed this First Stipulation, which did not contain a compliance program, on June 25, 1981. Subsequently, a hearing was held on March 5, 1982 and the parties filed a Stipulation and Proposal for Settlement (2nd Stip.) on March 8, 1982.

The Modern Plating Corporation, which is engaged in zinc, cadmium, nickel, chromium, and copper electroplating and rust-proofing operations, owns and operates a wastewater treatment plant (facility) located at 701-751 S. Hancock Avenue in the City of Freeport, Stephenson County, Illinois. (1st Stip. 3). The Respondent's facility, which discharges between 300,000 to 400,000 gallons of wastewater per day into the Pecatonica River, pursuant to NPDES Permit No. IL003298, is designed to treat cyanide-bearing, chromium-bearing and acid alkali streams of wastewater in batch treatment tanks and neutralization basins. (1st Stip. 3).

The parties have stipulated that: (1) on August 9, 1979, the Respondent's former facility operator disclosed to MPC that he had falsified discharge monitoring reports submitted to the Agency; (2) the Attorney General was promptly advised in person of this situation; and (3) the employee was immediately relieved of all environmental duties and soon after fired by MPC. (1st stip. 5). On May 5, 1980, the Illinois Attorney General filed a criminal complaint against the Respondent and some of its officers in the Circuit Court of the Fifteenth Judicial Circuit, Stephenson County, Illinois which was concluded pursuant to a Court Order and Plea Agreement on November 6, 1980. (See: The People of the State of Illinois v. Modern Plating Corporation, Paul Massion, Morris McCarthy and Lucille Miller, 80 CM 319; Ex. A and B of Complainant's Motion to Withdraw Certain Portions of the Amended Complaint; Ex. H to K of 1st Stip.). In the criminal court action, the Respondent "entered into a voluntary plea of guilty to a total of 12 counts alleged in the Criminal Complaint and paid a fine of \$125,000 into the Circuit Court of Stephenson County." (1st Stip. 8). As part of the Plea Agreement, the Agency and the Attorney General agreed to credit any fine imposed by the Board against the \$125,000 fine imposed on MPC by the Circuit Court. (Plea Agreement, p. 13).

Since September of 1979, the Respondent has increased its environmental staff, employed a competent new plant operator, instituted efficient quality control programs, and purchased some new equipment. (1st Stip. 10-13). Concurrently, the quality of MPC's effluent "has continued to improve to levels of, or approaching, compliance." (2nd Stip. 4-5). Although periodic noncompliance has occurred on various occasions, discharge monitoring reports and lab tests indicate a significant improvement in the Respondent's effluent discharges. (2nd Stip., Ex. H).

On September 21, 1981, the City of Freeport's Water and Sewer Commission gave final approval to MPC's request for permission to tie-in its pretreated wastewater to the City's publicly-owned treatment works. (2nd Stip., Ex. D). Construction of the tie-in began on February 8, 1982 pursuant to Agency Water Pollution Control Permit No. 1982-EE-0006. (2nd Stip. 3-4).

The proposed sewer connection will be accomplished by utilizing "906 linear feet of 10 inch diameter vitrified clay pipe, designed to transport treated industrial wastewater (300,000 gpd, 3000 P.E.) to an existing 24 inch diameter sanitary sewer located on Hancock Avenue and tributary to the Freeport Sewage Treatment Plant." (2nd Stip., Ex. G).

On May 7, 1981, the Agency filed a Motion to Withdraw with Prejudice all requests for monetary penalties. This motion was granted by the Hearing Officer on June 8, 1981. On June 16, 1981, the Agency filed a Motion to Withdraw with Prejudice all allegations of past violations other than those that had been expressly admitted to by the Respondent in the proposed Stipulation of Facts (First Stipulation or 1st Stip.). On June 17, 1981, this motion was granted by the Hearing Officer. Although the legality of these Hearing Officer orders is questionable, the problem is cured by their incorporation into the proposed Stipulation. The proposed settlement agreement imposes no monetary penalty against the Respondent and provides that MPC agrees to: (1) promptly complete its construction of the sewer connection and tie-in its effluent to the City of Freeport's sanitary sewer system by May 31, 1982; (2) adhere to a specified sludge management program; (3) follow all special conditions in its Water Pollution Control Permit No. 1982-EE-0006; and (4) perform the requisite chemical analyses of water samples drawn from four groundwater monitoring wells. (2nd Stip. 5-12).

The negotiations conducted by the parties herein with respect to the criminal case in the Circuit Court, a variance petition, and this enforcement case are not only inappropriate but resulted in a messy, if not illegal, resolution of the problem. Nevertheless, the Board will accept the Stipulation in order to facilitate the abatement of the pollution in as rapid a manner as possible.

The Board finds the settlement agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act and finds that the Respondent has violated the terms and conditions of its NPDES Permit, Rules 401(a) and 901 of Chapter 3, and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to follow the compliance program as delineated in the Stipulation and no monetary penalty will be assessed against MPC.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

1. The Respondent, Modern Plating Corporation, has violated the terms and conditions of its NPDES Permit, Rules 401(a) and 901 of Chapter 3: Water Pollution Regulations, and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.

2. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on March 8, 1982, which is incorporated by reference as if fully set forth herein.

Board Member J. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 29<sup>th</sup> day of April, 1982 by a vote of 7-1.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board