

ILLINOIS POLLUTION CONTROL BOARD  
May 14, 1981

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 78-136  
 )  
VILLAGE OF ROCKDALE, )  
 )  
Respondent. )

MR. THOMAS CHIOLA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MESSRS. JAMES E. BABCOCK AND JOHN A. BELOM, ROBSON, MASTERS, RYAN, BRUMMUND & BELOM, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by D. Satchell):

This matter comes before the Board upon a complaint and three amended complaints filed May 10 and November 21, 1978 and March 14 and July 3, 1979 by the Illinois Environmental Protection Agency (Agency) naming as respondent the Village of Rockdale (Rockdale). The third amended complaint alleges violation of Sections 12(a), 12(b) and 12(f) of the Illinois Environmental Protection Act (Act) and Rules 404(c), 408(a), 501(a), 601(a) and 901 of Chapter 3: Water Pollution in connection with discharges from a municipal wastewater treatment plant. Public hearings were held at Joliet on May 22, 1979 and on February 13 and August 21, 1980. At the third hearing the parties presented a stipulation and proposal for settlement. Members of the public attended the first and third hearings and at the third hearing showed concern about pollution of their shallow wells in Channahon by Rockdale's discharges into the Illinois and Michigan Canal.

The third amended complaint names as parties respondent "The Village of Rockdale, its President and Members of its Board of Trustees and the authorized agents at the municipal sewage treatment facility, each and all in their official capacities." This is insufficient to designate the individuals by name as respondents even in their official capacities [Procedural Rule 303(a)]. The Board finds that the only respondent is Rockdale and there is no necessity of either dismissing or finding violations against the unnamed respondents.

Rockdale operates a municipal wastewater treatment plant in Will County. It discharges to the Illinois and Michigan Canal south of Joliet. Discharge is pursuant to NPDES permit IL0030775 issued June 30, 1977.

The following table summarizes the allegations of the third amended complaint. References are given to sections of the Act and rules found in Chapter 3. Unless otherwise indicated, the allegations specify several instances during the period from November 1977 through October 1978. Rockdale objected to the allegation of violations occurring after the original complaint was filed. This will be discussed below.

<u>Count</u>	<u>Section Rule</u>	<u>Summary</u>
I	12(a), (b) and (f) Rule 901	Violation of NPDES effluent standards for residual chlorine, five day biochemical oxygen demand (BOD), total suspended solids (TSS), cyanide, phenols and fecal coliform
II	12(a), (b) and (f) Rule 901	Violation of NPDES monitoring and reporting conditions for fecal coliform, chlorine, BOD, TSS, pH, chromium, phenols
III	12(a) Rule 408(a)	Violation of cyanide effluent standard
IV	12(a) Rule 408(a)	Violation of phenol effluent standard in November 1977 and February 1978
V	12(a) Rule 404(c)	Violation of effluent standard of 10 mg/l BOD
VI	12(a) Rule 404(c)	Violation of effluent standard of 12 mg/l TSS
VII	12(a), (b) and (f) Rule 901	Failure to notify Agency of non-compliance with NPDES permit conditions as required by permit
VIII	12(a) Rule 501(a)	Failure to submit operating reports
IX	12(a) Rule 601(a)	Bypassing raw sewage during October 1978
X	12(a) Rule 901	Failure to submit discharge monitoring reports (DMR's) as required by NPDES permit for July, September, November and December
XI	12(a) Rule 501(a)	Failure to submit quarterly DMR's as in Count X
XII	12(a) Rule 601(a)	Lagoon level lowered by discharging partially treated sewage into waters of the state during May, 1979

The following is a summary of the permit conditions and the applicable effluent standards from Part IV of Chapter 3:

	<u>mg/l (except fecal coliform)</u>		Chapter 3	Count
	Permit Conditions <sup>1</sup> <u>30 day</u>	<u>7 day</u>		
BOD	10	15	10	I, V
TSS	12	18	12	I, VI
Residual Chlorine				
Minimum	0.2	--	--	I
Maximum	0.75	--	--	I
Fecal Coliform	400/100 ml (daily max.)		400/100 ml	I
Cyanide	0.025	--	0.10 <sup>2</sup>	I, III
Phenols	0.3	--	0.3	I, IV

<sup>1</sup>Exhibit A

<sup>2</sup>Rule 408(a) has been amended to increase the cyanide standard from 0.025 to 0.10 mg/l (R 74-15,-16; 31 PCB 404, September 7, 1978; 2 Ill. Reg. No. 44, Page 10, November 3, 1978).

Exhibits B through K contain discharge monitoring reports (DMR's) required by NPDES permits. The average of twelve average BOD reports was 214 mg/l, grossly in excess of the 10 mg/l condition and standard. The average of 9 average TSS reports was 104 mg/l, grossly in excess of 12 mg/l.

Of six reports, two are below the 0.2 mg/l minimum residual chlorine limitation. Of seven reports, one is in excess of the 0.75 mg/l maximum residual chlorine limitation. There are no reported levels for fecal coliform in Exhibits B through K.

Of four cyanide reports, all are in excess of the 0.025 mg/l permit limitation, exhibiting an average of 0.09 mg/l. Of two phenol reports, one is in excess of the standard.

On October 25, 1978 the Agency inspected the plant in response to numerous citizen complaints. Sewage was being given only primary treatment. Secondary treatment including the trickling filter and treatment lagoon were not in use (Stip. 10).

On May 24, 1979 an inspection disclosed operational and maintenance problems. The plant operator indicated that a line had been blocked causing a back-up into the facility. To gain access to the blockage the operator lowered the lagoon level from between eight inches to two feet. This was accomplished by discharging partially treated sewage to the Canal. Rockdale claims this resulted in a 5% reduction in total storage volume and reduced the detention time to 46 from 48 hours. Rockdale asserts that it used all reasonable efforts to alleviate the problem (Stip. 11).

Rockdale has at its own expense employed Beling Engineering Consultants to prepare plans for upgrading the plant to meet federal effluent limitations for secondary treatment (Stip. 12). These have been submitted to the Agency for review (Exhibits L and N through V). The Agency is unable to issue a construction permit since the upgraded facility would not meet Rule 404 effluent limitations (Stip. 12). The Agency questions whether the current proposal would even meet federal secondary treatment levels (Stip. 13). The parties have asked the Board to order the Agency to issue this permit in this action.

Rockdale is within the Joliet West Side service region. Future plans call for abandonment of the existing Rockdale facility upon regionalization. Any improvements to the existing facility would be only an interim measure (Stip. 12).

Rockdale objects to the allegations enumerated in paragraphs 7a and 7b of the stipulation (Stip. 4, 14). These allegations include some, but not all of the allegations of the third amended complaint and relate to dates both before and after the filing of the original complaint. The basis of the objection is not clearly set forth in the stipulation, but there is an inference that the Board lacks jurisdiction. In an Order entered July 12, 1979 the Board authorized the filing of the third amended complaint. Rockdale did not oppose the motion for leave to file or subsequently move to dismiss or strike.

Rockdale nowhere specifies the grounds for its jurisdictional objections. If the objection relates to personal jurisdiction, it was waived by voluntary appearance. The violations alleged in paragraphs 7a and 7b of the stipulation are certainly within the Board's subject matter jurisdiction. There is no doubt about jurisdiction concerning violations after the filing of the original complaint. There is no law which exempts respondents from application of the Act and Board rules during the pendency of litigation. Whether new violations should be added to a pending action or brought by way of a second complaint depends largely on how far the first action has proceeded. Objections should have been raised at the time and are now deemed waived. The Board finds that it has jurisdiction to find violations based on the allegations of paragraphs 7a and 7b and declines to exercise its option of accepting only part of the stipulation.

The stipulation provides that the allegations of paragraphs 7a and 7b are severable and that any order of the Board finding violations based on these allegations may be attacked on this basis in any court of competent jurisdiction. Such an Order would otherwise remain in full force and effect and be enforceable even if the finding of violations based on these paragraphs were stricken.

Rockdale has admitted all of the allegations except those alleged in Count XII of the complaint, including facts sufficient to find violations relating to paragraphs 7a and 7b, although it retains the right to make jurisdictional objections as noted above. Count XII relates to the May 24, 1979 incident in which the lagoon was lowered. The Agency has asked that Count XII be dismissed without prejudice. This request will be granted. Based on the admission and exhibits, the Board finds Rockdale in violation of Sections 12(a), 12(b) and 12(f) of the Act and Rules 404(c), 408(a), 501(a), 601(a) and 901 of Chapter 3, substantially as alleged in the Counts I through XI of the third amended complaint.

Paragraph 36 of the agreement contemplates compliance with interim standards until regionalization is accomplished or grant money received. This would potentially be approval of noncompliance for an indefinite period of time, contrary to the intent of Section 36(b) of the Act which limits variances to five years and requires satisfactory progress toward compliance. The Board has therefore limited the interim standards to five years. Rockdale will have to request a variance if regionalization or grant funding has not occurred.

The parties have agreed to a \$2000 civil penalty. The Agency contends that a \$10,000 penalty was warranted in view of the history and severity of the violations, but agrees to an \$8000 reduction in mitigation since Rockdale is a small municipality and now has a compliance program, part of which is set out in the stipulation. The Board finds the penalty is necessary to aid enforcement of the Act and finds the stipulation acceptable pursuant to Procedural Rule 331. The Board has considered the factors enumerated in Section 33(c) of the Act in reaching this decision.

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

ORDER

1. Respondent, the Village of Rockdale, is in violation of Sections 12(a), 12(b) and 12(f) of the Act and Rules 404(c), 408(a), 501(a), 601(a) and 901 of Chapter 3: Water Pollution.

2. Respondent shall cease and desist from further violations of Section 12 of the Act and Chapter 3 of the Board's regulations.

3. Respondent shall undertake a program of remedial measures based upon its Application for Permit (a copy of which is attached to the stipulation as Exhibit L) and Alternative C of the Report by Beling Consultants (a copy of which is attached as Exhibit M) and the revisions and clarifications of its plans and specifications (Exhibits N through V). Respondent shall submit information during its upgrading program which indicates the hydraulic profile of the plant and the capacity of the existing plant piping to handle a maximum flow of 1.5 million gallons per day (MGD). Respondent shall apply for a permit from the Agency for any modification of existing plant piping needed to accept a maximum flow of 1.5 MGD.

4. Respondent shall monitor the flow separately for each of the proposed discharge locations. The existing flow meter shall be placed in operation within thirty days of the date of this Order.

5. Respondent shall complete within fifteen months of the date of this Order the improvements outlined in the Application for Permit and the Beling Report. During this period of upgrading Respondent shall not discharge the following contaminants in excess of the indicated levels:

<u>Contaminant</u>	<u>mg/l except fecal coliform</u>	
	<u>30 day average</u>	<u>7 day maximum</u>
BOD <sub>5</sub>	110	200
Total Suspended Solids	50	125
Fecal Coliform	400/100 ml	---
Chromium (hexavalent)	---	1.0
Cyanide	0.5	---
Phenols	---	1.0
Zinc	2.5	---

6. Upon completion of upgrading Respondent shall not discharge from the main process stream the following contaminants in excess of the indicated levels:

<u>Contaminants</u>	<u>30 day average</u>	<u>Daily Maximum</u>
BOD	30 mg/l	-----
Suspended Solids	30 mg/l	-----
Fecal Coliform	-----	400/100
Chromium (total hexavalent)	-----	0.3 mg/l
Cyanide	-----	0.10 mg/l
Phenols	-----	0.3 mg/l
Zinc	-----	1.0 mg/l

7. Upon completion of upgrading as required by this agreement, Respondent may discharge from the stormwater outfall after settling and chlorination has occurred.

8. The discharges from the main process stream and the stormwater bypass stream after upgrading shall be allowed pursuant to the limits in paragraphs 6 and 7 until such time as the Village of Rockdale accomplishes regionalization with the Joliet West Side Sewage Treatment Plant or until such time as the Village of Rockdale has grant monies made available to it to upgrade the existing plant to Chapter 3 requirements or until April 16, 1986, whichever occurs first.

9. Should the discharge limits of paragraphs 6 and 7 not be achieved after upgrading as outlined in paragraph 3, Respondent shall take all necessary remedial measures to achieve the discharge limits.

10. The Respondents shall fulfill all requirements for maintaining the status of the Village of Rockdale on the Grants priority list pursuant to the schedule outlined by the Agency Division of Water Pollution Control Grants Section.

11. Respondent shall pursue an aggressive program of enforcement of the industrial pretreatment requirements of the Village of Rockdale Sewer User Ordinance, including establishment of a program to sample industrial discharges. Respondent shall continue to prosecute cases previously filed pursuant to said ordinance and initiate new actions under the Ordinance as required to eliminate industrial discharges which upset plant processes.

12. The Agency is authorized to issue a construction/operating permit to Respondent based upon the Application for Permit (Exhibit L), Alternate "C" of the Report by Beling Consultants (Exhibit M), and revisions and clarifications of the plans and specifications (Exhibits N through V).

13. The Agency is authorized, pursuant to Rule 914 of Chapter 3, to modify the NPDES permit for the Village of Rockdale so that it is consistent with this Order.

14. Respondent shall prepare every three months until completion of upgrading progress reports showing the status of compliance with the terms and conditions of this stipulation and proposal for settlement, including but not limited to the status of enforcement of industrial pretreatment requirements and the status of construction of improvements. Respondent shall submit such report within fifteen days of the end of the last month for which the report was prepared to the Agency Field Operations Section, 1701 South First Avenue, Maywood, Illinois 60153.

15. Respondent shall employ no less than two full time operators to conduct the necessary tasks in operating the proposed sewage treatment facilities. Respondent shall evaluate, within ninety days of the start-up of the new treatment facilities, the need for additional personnel to conduct laboratory and process control testing, routine maintenance, industrial waste control investigation and other items not directly associated with operating duties. The evaluation shall be submitted to the Agency as described in paragraph 14 above.

16. The Respondent shall embark upon and maintain a sludge management program as outlined in Exhibits W and X. Respondent shall send sludge from the facilities only to sanitary landfill sites which have the proper permits to accept such sludge. If an alternate means of disposal is used such method shall comply fully with the requirements of the Act and regulations.

17. Within thirty-five days of the date of this Order Respondent shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$2000 which is to be sent to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706


18. Count XII of the third amended complaint is dismissed.

IT IS SO ORDERED.

Mrs. Anderson, Mr. Dumelle and Mr. Goodman concurred.



I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 14<sup>th</sup> day of May, 1981 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board