

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1981

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 80-197
)
CITY OF JACKSONVILLE,)
)
Respondent.)

INTERIM ORDER OF THE BOARD (by I. Goodman):

On January 26, 1981 the parties filed a Stipulation and Proposed Settlement (Stipulation) with the Board. The parties submitted the Stipulation to the Hearing Officer at hearing on January 7, 1981. At that hearing it was stated that the parties had agreed that the City of Jacksonville would remit \$2,305.65 to the Wildlife and Fish Fund of the State Treasury in payment for fish killed by the City's raw sewage discharge into Mauvaise Terre Creek and that an additional \$2,694.35 would be remitted as a "penalty figure". (R.6). However, the written Stipulation, signed by the parties, states that the parties agree that \$1,994.35, and not \$2,694.35, should be assessed as a penalty. (Stip. 12,13). Because of this ambiguity, the Board rejects the parties' Stipulation. The record does not show that the parties had a meeting of the minds regarding the amount of the stipulated penalty.

An additional ground for rejection of the Stipulation is the parties' failure to identify by rule or section number the alleged violations of Board rules and/or the Illinois Environmental Protection Act (Act). Procedural Rule 331 provides that a "written statement" of stipulation and settlement "signed by the parties or their authorized representatives" shall contain a "full stipulation of all material facts pertaining to the nature ... of the alleged violations." A written stipulation and settlement is neither "full" nor replete with "all material facts pertaining to the nature ... of the alleged violations" if it fails to specify enumerated provisions of the Act or Board rules that allegedly have been violated.

Finally, the Stipulation would be improved if the parties referred to the sum to be paid to the Wildlife and Fish Fund as a Section 42(b) penalty. Section 42(b) of the Act states that payment to this fund for the reasonable value of fish destroyed may be required "in addition to the other penalties provided by this Act." The use of the word "other" indicates that payment to the fund is considered to be a penalty. Any other penalties may be designated as Section 42(a) penalties.

The Board hereby rejects the parties' Stipulation. The case is remanded for proceedings consistent with this Order.

IT IS SO ORDERED.

I, Christan L. Moffett Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 19th day of February, 1981 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board