ILLINOIS POLLUTION CONTROL BOARD

October 17, 1974

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 73-50
CARUS CORPORATION, a Delaware corporation, Respondent.	)	

Mr. Fredric J. Entin, attorney for Complainant.
Mr. Eugene W. Beeler, Jr., attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (Agency) filed a Complaint against the Carus Corporation (Carus) on February 2, 1973. An Amended Complaint was filed March 9, 1973, and a Second Amended Complaint was filed August 17, 1973. The Third Amended Complaint was filed September 14, 1973. In this Complaint, the Agency alleged that:

1. Respondent, from August 31, 1970, to September 14, 1973, discharged effluent into the Little Vermillion River from the South Lagoon of its facility in violation of Section 12(a) of the Environmental Protection Act (Act).

2. Respondent, from August 31, 1970, to March 7, 1972, operated its wastewater facilities in such a manner as not to remove color to below obvious levels from the effluent which discharged into the Little Vermillion Creek in contravention of Rule 1.08(10)(b)(3) of the Illinois Sanitary Water Board Rules and Regulations (SWB-14).

3. Respondent, from August 31, 1970, to March 7, 1972, operated its wastewater facilities in a manner producing odor in disregard of Rule 1.03(c) of SWB-14.

4. Respondent, from March 7, 1972, to September 14, 1973, operated its wastewater facilities in a manner allowing effluent from the South Lagoon to contain visible oil and failed to provide for removal of color and turbidity to below obvious levels contrary to Rule 403 of Chapter 3: Water Pollution Regulations of Illinois (Chapter 3).

On March 28, 1974, a hearing took place in Ottawa, Illinois. A Stipulation and Proposal For Settlement (Stipulation) was made part of the hearing record. On May 29, 1974, the Pollution Control Board (Board) ruled that the Stipulation was unacceptable. First,

no violations were admitted, and the evidence was insufficient to determine whether any offenses had occurred. Second, the Stipulation did not make clear whether the program of compliance would achieve conformance with all applicable regulations. Third, the inconsistent legal remedies of a penalty and dismissal were both sought in the Stipulation. We stated that we could not implement both remedies because "payment of a $900.00 penalty is predicated on violation of the Act or regulations; dismissal implies that no violation has occurred."

On September 18, 1974, the parties submitted to the Board an Amended Stipulation and Proposal For Settlement (Amended Stipulation). The parties stipulated that color violations under Rule 1.08(10)(b)(3) occurred on June 9 and September 14, 1971; Respondent also admitted violating the color and oil standards of Rule 403 of Chapter Three on March 7 and December 19, 1972. We hold that violations of Rule 1.08(10)(b)(3) and Rule 403 took place as admitted.

In pertinent part, the Amended Stipulation stated:

1. Carus "is presently engaged in the manufacture of industrial use chemicals, including CAIROX potassium permanganate, hydroquinone, and Mn28 manganese sulfate. Carus also produces, on a much smaller scale, several dry-mix chemicals of a proprietary nature. It employs 169 persons. . . .

2. "All water from the barometric condensors, equipment cooling water, drinking fountain water, and water from the boiler feed water station is discharged directly to the South Lagoon which, in turn, is designed to prevent the discharge of insoluble manganese and suspended solids into the Little Vermillion River. The South Lagoon is approximately 650 feet by 300 feet, has a design capacity of 1,500 gallons per minute, and discharges at the rate of approximately 670 gallons per minute. The South Lagoon and its effluent are the subject of this Enforcement Action. . . .

3. "Carus has undertaken various process and maintenance control improvements which were also expected to enhance the quality of the South Lagoon effluent, some of which were internally approved and begun prior to filing of this Enforcement Action by the Agency." The total cost of such improvements was in excess of $80,000.

4. "The parties hereby stipulate and agree to the following special conditions which shall modify this proposal notwithstanding any of the above terms and conditions:

> (a) The process and maintenance control improvement projects, having been completed, the parties hereby stipulate that the South Lagoon effluent is in compliance with those regulations for which violations were charged by the Agency in its Third Amended Complaint.

(b) The parties are submitting this amended proposal for settlements which, in conjunction with the record of the hearing previously held on March 28, 1974, in Ottawa, Illinois, should provide sufficient basis for the Board to enter a final order incorporating the terms and provisions provided herein.

(c) Carus agrees to remit $900.00 to the State of Illinois as a civil penalty for those violations admitted above. Said penalty will be paid within 35 days following the entry of the Order of the Board in this case.

(d) In the event that the Agency determines to take samples that in any way relate to any Carus effluent, Carus shall be provided an opportunity to have its representative accompany any Agency personnel during such sampling for the purpose of observing Agency sampling techniques and of obtaining split samples. Accordingly, before undertaking any such sampling, the Agency shall (i) give notice thereof to Carus, and (ii) provide Carus a reasonable opportunity for obtaining a representative to accompany Agency sampling personnel.

(e) Approval by the Board of this proposal shall constitute dismissal with prejudice of the Enforcement Action herein with regard to the South Lagoon.

(f) Should the Board fail to approve all of the terms of this proposal, said proposal shall, at the election of either party, be held for naught and no admissions or allegations contained herein shall serve to prejudice any party in any subsequent hearing and decision of this case.

We accept the Stipulation and Proposal For Settlement entered into between the parties. Although the penalty is only $900.00, large sums have been spent to bring about compliance with the Act and regulations. Also, where parties have come to an agreement to bring about the cessation of a pollution problem, we hesitate to disturb the settlement in the absence of citizen opposition to it.

Although the Amended Stipulation has satisfactorily answered the questions posed in our May 29 Order, the parties have still failed to resolve the problem of inconsistent remedies. Paragraph 4(c) calls for a penalty payment while paragraph 4(e) as quoted above prescribes dismissal. Since the Amended Stipulation should be read as a whole, we construe the "dismissal" in 4(e) to merely bar the Complainant from bringing another enforcement action against the Respondent for the time period and relating to the regulations set out in the Third Amended Complaint.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent cease and desist from violating the Act and regulations.

2. Respondent pay a penalty of $900.00 for its violations of the Act and regulations established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 35 days of the adoption of this Order.

3. The parties carry out Special Condition 4(d) of the Amended Stipulation as set out above.

Mr. Marder abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of October, 1974, by a vote of 3 to 0.

Christan L. Moffett