ILLINOIS POLLUTION CONTROL BOARD
August 29, 1974

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 74-51
ALTON BOX BOARD COMPANY	)	
and		
LACLEDE STEEL COMPANY	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 73-61
ALTON BOX BOARD COMPANY	)	
ALTON BOX BOARD COMPANY	)	
v.	)	PCB 74-5
ENVIRONMENTAL PROTECTION AGENCY	)	

MR. KARL HOAGLAND, HOAGLAND, MAUCKER, BERNARD & ALMETER, appeared on behalf of Alton Box Board Company;
MR. WILLIAM MCALPIN and JOSEPH WYERICK, LEWIS, RICE, TUCKER, ALLEN & CHUBB, appeared on behalf of LaClede Steel Company;
MR. DELBERT HASCHEMEYER AND MR. HENRY HANDZEL, ASSISTANT ATTORNEY GENERALS, appeared on behalf of the Environmental Protection Agency

OPINION OF THE BOARD (by Mr. Dumelle):

On July 18, 1974, the Board entered an Order approving an Amended Settlement Stipulation which terminated the above three cases. Due to the exigencies of time, the Board did not file an Opinion accompanying the previously issued Order pursuant to Procedural Rule 408.

Alton operates a papermill and LaClede operates a steelmill; both located in Alton, Illinois. Alton was granted a variance from certain Water Pollution Regulations while it proceeded to build a treatment facility to comply with the BOD and suspended solids standards applicable to the Mississippi River discharges, Alton v. EPA, PCB 73-140 (August 9, 1973). The record of this previous proceeding was incorporated into the record of the current proceedings by the parties pursuant to Procedural Rule 321(d) (Stipulation and Agreement filed by Alton and the Agency, page 3). On January 2, 1974, Alton filed a petition to extend the previously granted variance, PCB 74-5.

LaClede has two pending variance proceedings seeking variances from the Water Pollution Regulations pertaining to its discharges (PCB 72-425 and PCB 72-505).

On February 9, 1973, the Agency filed an enforcement action, PCB 73-61, charging Alton with numerous violations of the Environmental Protection Act (Act) and Water and Air Pollution Regulations allegedly caused by Alton's discharge of inadequately treated water effluents and air emissions from its boiler facility.

On January 29, 1974, the Agency filed an enforcement action, PCB 74-51, alleging Alton and LaClede with jointly or severally causing or allowing the discharge of hydrogen sulfide (H_2S) so as to cause air pollution in violation of the Act.

These cases were consolidated by Order of the Board on May 2, 1974. Two days of hearings were held. The first hearing on May 28, 19 74 resulted in numerous citizens' complaints about problems caused by H_2S (R. 4, 8, 9, 10, 11, 13, 14, and 15). In addition, the citizens present objected to the lack of or inadequacy in the public notice concerning the public hearing (R. 3, 4, 6, 7, 10, 16, 17, 20, 21, and 25). The parties were unable to work out and present the proposed settlement so the hearing was continued until June 7, 1974 (R. 25). On the second day of hearings, the parties presented the agreed stipulation and two citizens testified. One citizen testified about the strong acid odors and the other citizen testified to paint discoloration and alleged health effects of the H_2S emissions (R. 12-14, 14-17).

Alton Box Board Company (Alton), LaClede Steel Company (LaClede), and the Environmental Protection Agency (Agency) presented the Illinois Pollution Control Board (Board) with a Settlement Stipulation on June 11, 1974. In the variance proceeding filed by Alton

(PCB 74-5). the decision due date of June 20, 1974 was waived until June 27, 1974. On June 27, 1974, the Board orally indicated disapproval of the Original Settlement because the settlement did not provide for the payment of a penalty for violations of the Act and Board Regulations; because the settlement required Alton and LaClede to reimburse the Agency for witness expenses; and because of other unanswered questions.

Because Alton has agreed to "directly" discharge its waste effluent to the Mississippi River and because Alton is proceeding according to the project completion schedule which forms the basis of the previously granted variance, the Board granted Alton the requested variance extension subject to the same conditions specified in the original Board order in PCB 73-100.

Before approving the Settlement Stipulation presented by the parties, the individual Board Members twice conveyed their disapproval of the proposed settlement stipulation to the three parties present during Board discussion. The original settlement stipulation was not approved by the Board for two principal reasons. The first of these dealt with the agreement by Alton and LaClede to assume the $26,000 in costs incurred by the Agency through the contracting with an environmental consulting engineer and an expert witness. The Board notes that these expenses were incurred by the Agency in developing a procedure to quickly abate the H_2S problem in the Alton area. Alton has implemented the engineering plan and thus has apparently assumed the benefits of the Agency's obligation (Stipulation, page 78). However, the Board does not find that the conditioning of the granting of a variance, or proposed termination of an enforcement order, should be based upon the assumption of an Agency obligation by the party petitioning for the variance request or the respondent in an enforcement action. The parties rectified this by substituting a supplemental settlement stipulation on July 8, 1974. This supplemental stipulation deleted reference to the assumption of the Agency liability of $26,000.

The second area of concern was the failure of Alton and LaClede to agree to the payment of a penalty for what appeared to be substantial environmental insults. The Board, while not making any findings concerning the allegations in the two enforcement actions, filed on behalf of the Agency (EPA v. Alton, PCB 73-61 and EPA v. Alton and LaClede, PCB 74-51), pointed out at the June 27 meeting that the apparent facts and testimony presented to the Board in support of the proposed stipulation did not warrant the termination as proposed by the parties. The Board noted with approval that the parties have taken action to abate the H_2S problem. However, it is the legal duty of a person to take the necessary steps to abate a nuisance if they are the party at fault. This resulting abatement action could serve as a mitigating circumstance but does not excuse

the original violation.

The second supplemental stipulation did not provide for the payment of any penalty. The Board Members again indicated their disapproval of the settlement. Alton again waived the 90-day decision period.

In support of the Board's view to twice reject the settlement of the enforcement action, the Board noted that 205 instances of citizen complaints during the months of June through September, 1973 regarding H_2S emissions were submitted as Exhibit 40 to the proposed settlement. Numerous citizens testified regarding paint discoloration allegedly caused by H_2S. A minister testified as to what he alleged were H_2S paint discolorations on his newly repainted church (R. 4). The Agency consulted with a paint manufacturer who allegedly identified H_2S as the cause of the paint discoloration in the Alton area (Exhibit 42). A citizen testified regarding an alleged outbreak of respiratory ailments which occurred last winter (R. 2, 17). She also testified as to the alleged interference with her health which was caused by the H_2S emissions (R. 2, 16). The Agency monitoring allegedly detected levels of H_2S approaching 8 ppm in the vicinity of Alton's clarifier (Exhibit 48). The report of the Environmental Health Resource Center on H_2S recommends a health related air quality standard of 0.015 ppm for H_2S (Stipulation Exhibit 46). The odor threshold for which H_2S becomes detectable is 0.0005 ppm. The Agency has purported monitoring data which allegedly shows Alton to have caused violations of the Act and both Water and Air Pollution Regulations (Exhibit 39, 40, 42, 43, 44, & 48). All of these allegations, taken with others not detailed in thos Opinion appear to present evidence of substantial violations of the Act and applicable Board regulations. The Board, in rejecting the Settlement of the proposed enforcement cases, follows previous Board actions taken in the following cases in which settlements were rejected; Packaging Corporation of America v. EPA, PCB 71-352, 5-91, and EPA v. Packaging Corporation of America, PCB 72-10, 5-91, Order August 8, 1972, Opinion August 15, 1972, and EPA v. Raymond A. Petersen and Petersen Sand and Gravel, Inc., PCB 71-381, 5-93, (August 8, 1972).

The Board was created under the Environmental Protection Act to insure the existence of a forum made up of individuals with special expertise to hear environmentally related cases. The Board has a duty in ruling on proposed settlements to insure that the proposed settlement fairly represents the people of Illinois. Section 2(b) of the Act states:

> "It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them."

The Board must insure that the citizen's interests are adequately represented; and that the adverse effects upon the environment are fully considered and borne by those who cause them. Accepting the proposed original or first alternative settlement would not have adequately, in the Board's mind, protected the citizens of the State nor complied with the directive found in Section 2(b) of the Act.

On July 17, 1974, the parties filed a second Amended Settlement Stipulation which formed the basis of the Board's determination. This settlement stipulation contained an agreement by Alton and LaClede to jointly and severally pay $30,000 to the State Fish and Game Fund. The Board accepting this as amounting to a sufficient penalty for the violation alleged in the two enforcement actions. Payment to the Fish and Game Fund was approved because of the significant deterioration caused by the combined discharges of industrial waste on aquatic life in the Mississippi River as apparent by Agency photographs and monitoring data.

The hydrogen sulfide--H_2S--problem which emanated at least in part from the impoundment of Alton's and LaClede's industrial waste and from Alton's clarifier and sludge lagoon constituted a public health problem which weighed heavily in the Board's determination to accept the settlement. The parties represented to the Board that failure to approve would result in up to 30 days of case trial, which would have taken a great deal of time to reach final Board action. Alton and LaClede represented to the Board that they would be unwilling to undertake the proposed project to alleviate the H_2S health problem absent of Board acceptance of the settlement. In the event a hearing would have been held, such an industrial policy would possibly have justified a much greater penalty than that agreed to. As previously stated in this opinion, it is the legal duty to abate a public health hazard even in the absence of a Board Order to do so. Final rejection of the settlement by this Board would only have subjected the residents of Alton to further environmental and health insults of grave proportions.

Thus, because the parties presented the Board with a program which should result in the correction of a problem which has and may in the future present a significant public health and environmental hazard, because Alton and LaClede agreed to pay the $30,000, and because Alton presented a viable continuing program to upgrade its waste treatment facility, the Board decided to approve the Amended Settlement Stipulation.

The Board notes that in the previously granted variance decision, the Board held that Alton discharged to the Mississippi River through an industrial ditch, not to waters of the State which were tributary to the Mississippi River. Therefore, the Board held that the 20 mg/l BOD, and 25 mg/l suspended solids limitation were applicable to Alton's discharge (Alton v. EPA, PCB 73-140 at 9-18 and 19, August 9, 1973). This was premised upon the presentation by Alton that the discharge was discharged directly to the Mississippi River through an industrial channel (R. 184, 185, PCB 73-140). In the previous proceeding, Mr. Bauer testified that, "the overflow (from the clarifier) goes directly to the Mississippi River" (R. 184, PCB 73-140). Enclosed in Exhibit 37, attached to the Stipulation, was a letter from the District Army Corps of Engineers to the Chairman of the Illinois Pollution Control Board stating that the twin 60's, which were the discharge point through the Mississippi levee, were closed early in 1973. The following actions were taken by the Corps at this structure prior to and during the 1973 spring flood; a) a metal plate was installed over both 60-inch culverts at their river terminus on January 27, 1973; b) a metal plate was installed over the upstream 60-inch culvert at its landside terminus on February 24, 1973; c) an inflatable pipestopper (rubber pig) was installed between the gate-well structure and landside terminus of the upstream pipe on March 6, 1973; and d) during the periods April 6-8, 1973, steel sheet piling was driven through both 60-inch culverts between the gate well and their riverside terminuses (Alton Exhibit 37).

Thus, at the time of the hearings in PCB 73-140 and the date that the Board granted the original variance, Alton's discharge was not directly to the Mississippi River but instead was impounded behind the levee. This impoundment area backed up some 7,200 feet upstream to the Wood River Drainage District Alton pumping station where it was pumped over the Mississippi levee (Exhibit 38, page 7). The current projection is that during the months of January through June, the new twin 60's being constructed by the Corps, which are supposed to drain the impoundment area during the periods of low flow in the Mississippi River, will be closed 25% of the time and during the month of April will be closed approximately 50% of the time (Exhibit 47, page 6). This will cause the impoundment of any discharge into the impoundment area and the eventual co-mingling of this impounded discharge with drainage waters at the Alton pumping station. Because of this information, the Board finds that its previous ruling that Alton discharged directly to the Mississippi River is of no precedential value. The original decision that Alton discharged directly to the Mississippi River was correct based upon the information presented at the original hearing in PCB 73-140. However, this new information presented regarding the closing of the twin 60's does not support a determination

that Alton discharges directly to the Mississippi River. Therefore, the Board, as agreed by Alton, conditioned the granting of an extension of the variance to Alton on the condition that Alton discharge its effluent, by means of a pipe over a levee, to the Mississippi River.

This Opinion constitutes the Board's findings of facts and conclusions of law.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 29th day of August, 1974 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board