ILLINOIS POLLUTION CONTROL BOARD
November 28, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 72-76
FANSTEEL, INC. and the CITY OF NORTH CHICAGO	)	

OPINION OF THE BOARD (by Mr. Dumelle)

This opinion is in support of an order entered by the Board on October 31, 1972 accepting a Stipulation and Proposal submitted by Fansteel, Inc. (Fansteel) and the Agency on June 14, 1972 as modified by a letter received October 31, 1972.

Complaint was entered by the Agency against Fansteel and the City of North Chicago on March 1, 1972 charging Fansteel with causing water pollution [Sect. 12(a) of the Environmental Protection Act]; violations of Rule 1.03(a), (c), and (d) of SWB-14; and violations of Rule 1.01 of SWB-5 (cyanide discharge) and charging North Chicago with allowing the discharge of the Fansteel contaminants thus causing water pollution. On June 14, 1972 a public hearing was held in North Chicago at which the Stipulation was presented for public comment. There was no adverse comment and in due time the Stipulation was presented to the Board.

Fansteel has two plants in North Chicago employing 700 persons manufacturing electrical contacts using precious metals among other materials. The South Plant is some 65 years old and includes processes of nickel plating, acid cleaning and tumbling and burnishing. The North Plant dates from 1942 and contains processes of metal cleaning, tungsten cutting, wire and tube drawing, tungsten powder reduction and generates effluents from the boiler house and laboratories.

Effluents from these two plants were discharged to Pettibone Creek containing settleable solids, cyanide, metals, acid and caustic wastes. Biological surveys performed in 1968 and 1970 have indicated detrimental effects from the Fansteel discharges to Pettibone Creek. The turbid wastes from the north plant and the toxic wastes from the south plant affect the north

branch and main trunk of the stream to its mouth at the Great Lakes Naval Training Station Harbor. The reaches of the creek from the south plant outfall to and somewhat beyond Sheridan Road are best described as a biological desert. The creek does not fully recover before it terminates at the harbor. (EPA Statement of September 25, 1972, pp. 9-10).

The Stipulation provides and the Board has ordered that Fansteel will pretreat the South Plant effluent to permit discharge of all of its effluent to the North Shore Sanitary District as specified in Exhibit F of these proceedings within 22 weeks after an Agency permit is issued. Similarly, the Board has ordered that the North Plant pretreat its effluent in order that it may be discharged to NSSD to be done within 26 weeks after the Agency permit is issued.

In first discussing the Stipulation, the Board has two main concerns before approving it. The first concern dealt with the effects of the Fansteel effluent upon the North Chicago sewage treatment plant of the North Shore Sanitary District both as to possible upsets of the biological treatment and possible hydraulic overloading. On July 25, 1972 the Board entered an order requesting additional data from the Agency.

The Agency furnished on September 25, 1972 an extensive theoretical analysis showing that the biological treatment would not be harmed. It justified the additional hydraulic load on the plant in spite of the Board's prohibition of other new connections to it by the fact that this diversion of the Fansteel effluent out of Pettibone Creek would enable that body of water to recover and would eliminate the present health hazard of toxic wastes in the Creek.

The second concern of a majority of the Board had to do with the amount and nature of the stipulated penalty to be paid. The June 14, 1972 original stipulation provided that Fansteel would conduct certain research on the carbon adsorption treatment of cyanide at the South Plant even though not necessary to permit the effluent discharge to the North Shore Sanitary District's plant. Data on the research was deemed to be of value to the Agency (Para. C). If the expenditures for this research program did not exceed $25,000 then the difference between the figures would be paid to the State of Illinois (Para. D). The majority of the Board felt that Agency research should not be financed through, in effect, a penalty due the State. And since it was anticipated that, in fact, the research expenditures would exceed $25,000, therefore no specific penalty would accrue to the State even though damage to Pettibone Creek from water pollution had occurred.

The modified Stipulation of October 31, 1972 provides that Fansteel will pay a penalty of $20,000 to the State and will in addition perform the [illegible] research. The Board finds the modification entirely satisfactory and commends Fansteel for its offer to advance the waste treatment art in this fashion.

The City of North Chicago has filed a Motion for Summary Judgment which, in effect, would hold that it is absolved from any responsibility so far as abating pollution emanating from its sewers, as a consequence of the North Shore Sanitary District's alleged preemption of this responsibility. We find that a substantial issue of fact exists as to the role of the North Shore Sanitary District in this respect, which, itself, would preclude the entry of a summary judgment. Secondly, even if this was not so, we do not find North Chicago's contentions persuasive. The ordinance cited by North Chicago does not purport to relieve municipalities of their responsibility. The motion for summary judgment is denied. The mere [illegible] functions of a sanitary district [illegible] in itself relieves the city from its responsibilities so far as abating pollution from its sewers. See EPA v. City of Champaign, #71-51C, 2 PCB 43, September 16, 1971; EPA v. City of Urbana, #71-165, PCB , September 6, 1972. By this holding, we are not precluding the possibility of arrangements between cities and sanitary districts, whereby a sanitary district would assume all responsibility and obligation with respect to sewage generated within a particular municipality, when such arrangement causes the sanitary district to assume this responsibility. However, in the present case, adequate proof of such an arrangement has not been made. Nevertheless, because of the disposition arrived at between Fansteel and the EPA, we see no reason that [illegible] against the municipality and none will be imposed.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the ____ day of November, 1972 by a vote of ______________________________.

Christan L. Moffett, Clerk
Illinois Pollution Control Board