

ILLINOIS POLLUTION CONTROL BOARD  
March 14, 1972

ENVIRONMENTAL PROTECTION AGENCY    )  
  )  
  v.                                   # 71-25  
  )  
CITY OF MARION                            )

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  )  
  v.                                   # 71-225  
  )  
ENVIRONMENTAL PROTECTION AGENCY    )

Opinion & Order of the Board on Motion for Stay (by Mr. Currie):

On October 28, 1971, we entered an order requiring the City, among other things, to complete construction of improved sewage treatment facilities by September 30, 1972, to pay a money penalty of \$100, and to post a bond assuring performance. The City filed an application for stay pending appeal, which also contained a request that the complaint be dismissed. We sought and received the Agency's response and the City's rejoinder.

Insofar as the application seeks stay of the money penalty pending judicial review, we shall grant it as in prior cases, on condition that a bond be posted to assure payment with interest upon an adverse decision. Insofar as other provisions of the order are concerned, we decline the stay, for reasons given in earlier decisions, e.g., Spartan Printing Co. v. EPA, # 71-19 (June 23, 1971). To stay the construction of the plant would render the order meaningless, and to stay the bond would deprive it of force.

The motion that we dismiss at this late date is denied. It is not supported by the facts or the law. The complaint was amply proved; the Board's order specifically ordered sanctions for the violations found; the opinion is replete with discussions of the relevant factors under the statute for determining violations and penalties.

The City raised one additional issue, however, that has merit. Our initial order required Marion to advertise for bids by December 30, 1971. But bidding was dependent upon EPA approval of the permit application, which was pending at the time of our decision and which was not granted until after December 30. Thus the City objected that the bid date amounted to requiring the City at once to forfeit its bond, which it considered an arbitrary penalty in light of the fact the delay was due to the need for Agency permit approval. The Agency agrees there should be no forfeiture, and so do we. At the same time EPA observes that since construction was not to begin during the winter freeze even on the initial schedule, there is no need to revise the completion date of September, 1972. We agree.

We therefore amend the October 28 order by striking paragraph 2 (a), which set the December bid date, and by allowing an additional 35 days after receipt of this order to post the bond required by paragraph 7. The money penalty of paragraph 8 is hereby stayed in accordance with this opinion. In all other respects the order remains in full force and effect.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 14<sup>th</sup> day of March, 1972, by a vote of 4-0.

