

ILLINOIS POLLUTION CONTROL BOARD

August 15, 1972

PACKAGING CORPORATION OF AMERICA,	)	
a Corporation	)	
	)	
v.	)	PCB 71-352
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
v.	)	PCB 72-10
	)	
PACKAGING CORPORATION OF AMERICA,	)	
a Corporation	)	
	)	

OPINION OF THE BOARD (by Mr. Dumelle)

This opinion is in support of the order adopted herein on August 8, 1972.

The case is now a consolidation of two actions. The first (PCB 71-352) is a petition for variance and the second (PCB 72-10) is an enforcement action. The petition seeks a variance from Section 12(a) and 12(b) of the Environmental Protection Act and any regulations thereunder for such time as is necessary to install a solids separation system and primary clarifier needed to bring the Packaging Corporation of America Quincy paper board mill into compliance. Subsequent to filing the petition the Agency filed an enforcement action alleging that Packaging Corporation of America (PCA), on six separate dates, violated Section 12(a) of the Act and also Rules 1.05-5, 1.05-7, 1.05-8, 1.05-10(a) and (b) and 3.01-10(b) of the Illinois Sanitary Water Board Rules and Regulations SWB-13 Water Quality Standards for the Mississippi River between Illinois and Missouri. Partial hearing on the consolidated cases was held on May 15, 1972.

On July 10, a Stipulation of Facts and Proposed Settlement was filed by the parties. Therein, PCA enumerates its partially completed and proposed abatement program which program has been accepted by the Agency. Also indicated are the results of two 26-day composite samples taken from locations immediately prior to flow in both the Number 4 and Number 6 discharge lines. For the Number 4 line the effluent contains 436 mg/l BOD and 1916 mg/l suspended solids; for the Number 6 line the effluent contains 633 mg/l BOD and 2219 mg/l suspended solids.

Those BOD levels for the Numbers 4 and 6 lines are respectively two and three times more concentrated than for raw sewage. The suspended solids levels are respectively around eight and nine times more concentrated than for raw sewage. The total flow from the two outfalls is 3,807,000 gallons per day.

Using the flow and concentration figures given in the stipulation of facts and the accepted population equivalents (one lb. of BOD per day equals six persons; one lb. of suspended solids per day equals five persons) the strength of the discharge can be computed. On a BOD basis, the PCA effluent is equivalent in deoxygenating effect to the untreated wastes of 109,560 persons. On a suspended solids basis, the PCA effluent is equivalent to the untreated wastes of 338,000 people.

Group Exhibit 1, stipulated to by PCA, contains a lengthy memo prepared by the Agency which summarizes five inspections made during 1971. The July 20, 1971 narrative states, "There was a large deposit of paper pulp sludge in the river downstream from outlet #6 at the time of this survey. Also it was noted that the river was becoming silted in with paper pulp sludge near the #6 outlet (p.6)." The entries for this same date quantify the bottom deposits mentioned above. On p. 8 of the memo the following appears, "A large mass (approximately 30 ft. by 60 ft.) of accumulated grey paper pulp solids were observed just downstream from #6 outlet sewer."

This effluent, without question, must be having a deleterious effect upon Mississippi River oxygen levels, upon bottom organisms (benthos) and upon the aquatic community in its many aspects. The Stipulation (Par. 27) speaks of environmental effects as follows:

The Quincy mill discharge has its principal harmful effects upon the recreational and aesthetic values of the Mississippi River; while the oxygen demand placed on the river may tend to inhibit advanced forms of aquatic life in a limited section of the river, removal of the Quincy mill's effluent will not, in and of itself, materially assist aquatic development in the Mississippi River. (Emphasis added)

We note that the Stipulation makes no reference to any program for removal of the existing sludge deposits. We suggest that such a program be seriously considered at the present time.

Other references exist in the memo to color caused by PCA. On p. 5 "the river was noted to be red in color extending from its shoreline to approximately 30 ft. to 40 ft. out into the river, and some 200 ft. to 300 ft. downstream from the location of outlet #4." The color is explained as "due to the presence of iron

oxide which was being used to color the candy bar package cardboard which was being made. . . " On the same June 28, 1971 visit and also on p. 5 in the memo, "A trail of grey-white colored waste (from #6 outlet) was noted to be trailing over one-fourth mile downstream from the industry. "

On May 1, 1960 the Sanitary Water Board issued Technical Release 20-11 which required industrial treatment of effluents that might form sludge deposits or floating debris or color.

Effective July 25, 1964, the Illinois Sanitary Water Board adopted the regulation designated as SWB-4 for the Mississippi River between Missouri and Illinois which required the equivalent of primary effluent treatment for industries. In 1967 the Water Board adopted SWB-13, which re-affirmed the primary treatment requirement of SWB-4 and went even further by requiring secondary treatment or its equivalent on or before December, 1982. By amendment dated March, 1971, the 1982 deadline was advanced to December 31, 1973. Thus, since 1960 there has been in existence requirements of at least primary treatment on the Mississippi. PCA, which acquired the Quincy mill in 1965, has never met that requirement.

The parties, in the Stipulation, have agreed to a \$3000 penalty for the violations alleged in the complaint. We cannot accept that low an amount in a case this serious. First, the strength of the effluent has been exceedingly high. Second, the strictures against sludge deposits, color and floating material have been violated. Third, PCA has not shown due diligence in solving its problem. Absolutely nothing was done by the company until 1971 which was six years after PCA acquired the Quincy mill. We must charge the company with notice of the primary treatment requirement which began in 1960. SWB-4 and SWB-13 were both duly adopted regulations pursuant to statute. We find no justification in this case for their not being followed well before 1971. The fact that PCA was not personally notified of the law is no excuse for their lack of effort. The law was on the books and they were under a duty to find out what it said. No national corporation such as PCA would operate a plant such as this without determining the pertinent law for their plant.

Inasmuch as the Stipulation and Proposed Settlement comes before us in a take-all-or-nothing form, we must reject it based upon the inadequacy of the penalty. In imposing a substantial penalty upon an untreated discharge (incidentally of about the same BOD strength) we said:

To let the company off scot free would encourage others -- and GAF itself -- to be dilatory in the future. (GAF Corporation v. EPA, April 19, 1971, PCB 71-11. )

We suggest that the parties re-negotiate and increase the penalty substantially or in the alternative conduct a full hearing on all the issues whereupon the Board will take the entire matter under advisement.

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

Mr. Henss dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 15<sup>th</sup> day of August, 1972 by a vote of 4-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board