

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 1972

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 )

v. )

#71-157

CITY OF SILVIS )

Mr. John C. Parkhurst, for the Environmental Protection Agency;  
Mr. N. L. McGehee, for City of Silvis

Opinion of the Board (by Mr. Currie):

After a long and tortuous history, this case has resulted in a settlement proposal that is a credit to all parties and a significant triumph for the important principle of regional sewage treatment. We approve the settlement for reasons given below.

The complaint of the Environmental Protection Agency, filed June 22, 1971, charged Silvis with polluting the Rock River by discharging inadequately treated sewage and with failure to meet the deadlines of Rules and Regulations SWB-11, which required submission of plans for secondary treatment by June 1, 1967 and prompt construction thereafter. Only primary treatment is at present provided.

At a hearing September 13, 1971, the Agency and the City proposed the entry of a consent order under which Silvis would construct its own secondary treatment facilities in accordance with a specified time schedule. We found in the record no sufficient explanation for the abandonment of an earlier plan to construct an interceptor to transport Silvis's wastes to East Moline for treatment in a single large regional plant. Noting that "the Board has consistently taken the position that it favors the use of larger plants where possible" because "this regional, large plant approach makes the cost of waste treatment less and in many cases improves the efficiency of the treatment process," we ordered the parties to submit "a full and complete explanation as to the obstacles which prevent the City of Silvis from connecting the treatment plant of the City of East Moline." EPA v. City of Silvis, #71-157 (Oct. 18, 1971).

On November 11, 1971 we entered a supplementary order reciting that the City's response, which reaffirmed opposition to a regional solution, raised important issues requiring input from parties not then represented, including the City of East Moline, which would be required to treat the sewage under a regional solution, and the Bi-State Planning Commission, which had long favored the regional approach. We added the necessary parties and authorized a further hearing.

After considerable negotiation and further proceedings, a final hearing was held July 24, 1972, and all interested parties concurred in the submission of the proposed settlement now before us. All parties now agree that the optimum solution is the construction of an interceptor to allow for regional treatment at East Moline, which will eliminate the need for any discharge into the Rock River at Silvis. East Moline itself must expand its facilities in order to accommodate the increased load, and it must provide secondary treatment under our revised regulations by December, 1973, for its effluent discharge to the Mississippi River. East Moline undertakes in the present settlement to make the necessary improvements; Silvis's discharge is to be terminated by the end of 1973 or such later date as East Moline may be allowed for completing the expansion of its primary (not secondary) facilities. The record is clear that a certain delay has been occasioned in East Moline's plans by the need to resolve the disposition of Silvis's problem.

The proposed program fully conforms to our expressed policy of encouraging regional treatment facilities, as more fully explained in our opinion in In the Matter of DuPage County Sewage Regionalization, #R70-17 (Jan. 6, 1972). We are convinced that, given past delays, it offers the best practicable solution today to Silvis's problem.

A complete solution to the problem will require not only East Moline's acceptance of the Silvis waste but also the secondary treatment required by our regulations even for the Mississippi. East Moline's program for providing such treatment is under way, and East Moline has asked us to grant a variance extending the December 1973 deadline in that regard. We agree with the Agency that this question cannot adequately be decided on the record now before us; East Moline should file a petition meeting the requirements of our procedural rules and be prepared to demonstrate its hardship and the justifications for its delay in a public hearing in which the Agency can take an active part.

The remaining question is whether Silvis should be penalized for the substantial delay in meeting its obligation to terminate the discharge of inadequately treated wastes to the Rock River. It is conceded that there has been a violation of the deadlines regarding secondary treatment; the Agency in its stipulation and proposed order "acknowledges mitigating circumstances in the delay" and notes that the City "has cooperated fully in all hearings and pre-hearing conferences in an attempt to arrive at the best possible solution," and therefore the settlement proposal provides for no money penalty. We are not

informed as to what the Agency regards as "mitigating circumstances," and we should be under our rules so that we can better evaluate the proposal. And working diligently now, while indicating a presently favorable attitude, cannot completely excuse an earlier default. See *Packaging Corp. of America v. EPA*, #71-352 (August 15, 1972). On the other hand, we have consistently afforded considerable latitude to the adversary parties in achieving a consent order that resolves the controversy and provides for adequate future control of pollution without further expense of litigation, provided that the settlement is not such as to encourage disregard for the law by grossly underpenalizing past defaults. See, e.g., *EPA v. Granite City Steel Co.*, #70-34 (April 25, 1972).

We know from the record that at least some portion of the past delay in Silvis's case has resulted from the controversy over whether to go it alone or to go in with East Moline. So far as we can tell this controversy has been in entirely good faith. Whether it was justifiable to take so many years to resolve it, or whether that is the whole explanation, we cannot say from the record. Moreover, our policy has been that money penalties against municipalities should be kept generally low in order to preserve scarce funds for corporate purposes and to avoid penalizing innocent citizens for the omissions of their government. See *City of Springfield v. EPA*, #70-55 (March 31, 1971). Whatever we might do if this case had been presented to us on the basis of a full hearing for our initial evaluation, we do not think the absence of a penalty under all these circumstances is so unreasonable as to require us to reject a consent order arrived at by all parties.

Accordingly we approve the proposed order as it has been presented to the Board.

#### ORDER

1. That the City of Silvis is now and has been for some time in violation of the Environmental Protection Act in that it caused water pollution within the State of Illinois, by discharging untreated or improperly treated sewage into the Rock River, and that it failed to meet construction deadlines, all in violation of Section 12(a) of the Illinois Environmental Protection Act, and SWB-11, Rule 1.08(10)(b), (11)(b), 12, 14 and 15, but seeks to immediately bring itself into compliance by the construction of an interceptor sewer main from its present collection system to the East Moline sewage collection system at a point in said system previously constructed for that purpose by the City of East Moline, in the manner described below.

2. That the Permit #1972-AA-26 - Log #1653-71 previously issued to the Respondent City of Silvis on January 10, 1972, allowing the City to up-date its existing treatment facilities in the Village of Carbon Cliff, will be rescinded upon compliance by the Respondent City of Silvis with all provisions of this Order.

3. The City of Silvis is ordered to submit to the Environmental Protection Agency on or before the 15th day of March, 1973, final plans and specifications for the construction of the interceptor main from its own collection system to the connection provided in the East Moline sewage disposal system, and the City is ordered to make whatever provisions or changes may be necessary to comply with all applicable regulations within a reasonable time from the request therefor.

4. That the City of Silvis is ordered to complete construction of the proposed interceptor main by December 31, 1973, that date on which the City of East Moline is required by regulation to have upgraded its present disposal facilities, providing secondary treatment. Provided, however, that if the City of East Moline shall apply for and receive a variance extending the time for which to provide secondary treatment, and if such variance includes a date later than December 31, 1973, for the completion of the construction and addition of primary treatment facilities, which shall be required as part of the secondary treatment facility construction, the City of Silvis shall complete the construction of the interceptor main no later than that extended date.

5. The City of East Moline shall make all necessary attempts to comply with the State requirements regarding the upgrading of its present sewage treatment facilities, including the increase in capacity of its facilities with primary treatment, and the addition of secondary treatment. Should the City of East Moline require any time beyond the present date of December 31, 1973, for completion of its secondary treatment facilities, it shall apply for an appropriate variance from the Pollution Control Board to do so. However, in all events, the City of East Moline shall make every effort to complete the increased capacity of its facilities with primary treatment and chlorination at a date no later than December 31, 1973. If such primary treatment facilities are completed no later than December 31, 1973, then the City of Silvis shall be required to complete the construction of its interceptor main no later than that date. In short, the City of Silvis shall be required to complete the construction of its interceptor main by a date no later than that date upon which the City of East Moline shall complete the construction of its new, increased capacity sewage treatment facilities with primary treatment; and

that the City of East Moline shall make every possible effort to see to it that such facilities are constructed no later than December 31, 1973; and in any event should a date later than that be required, an appropriate variance shall be sought for such extended date by all appropriate parties.

6. The cost of the proposed construction by the City of Silvis and by the City of East Moline shall be paid out of funds on hand available for such purposes, or out of the general funds of such municipality not otherwise appropriated. If funds on hand or unappropriated are insufficient for the purposes of complying with this Order, the necessary funds shall be raised by the issuance of either general obligation or revenue bonds. If the estimated cost of the steps necessary to be taken by the City of Silvis and by the City of East Moline to comply with this Order is such that the bond issue necessary to finance the project would not raise the total outstanding bonded indebtedness of the City of Silvis and the City of East Moline, respectively, in excess of the limit imposed upon such indebtedness by the Constitution of the State of Illinois, the necessary bonds may be issued as a direct obligation of such municipality and retired pursuant to general law governing the issue of such bonds. No election or referendum shall be necessary for the issuance of bonds under this paragraph. The funds made available by the issuance of direct obligation or revenue bonds, as herein provided, shall constitute a Sanitary Fund and shall be used for no other purpose than for carrying out such order or orders of the Board.

7. To insure compliance with this Order, the City of Silvis and the City of East Moline, respectively, shall submit to the Agency their Performance Bonds in the amount of Ten Thousand (\$10,000.00) Dollars each without corporate surety, signed by the appropriate municipal officials under a Resolution authorizing its execution and providing for a forfeiture of said bond, or that portion thereof, as directed by the Pollution Control Board on any subsequent hearing ordered for such purpose.

8. That the Cities of Silvis and East Moline have previously made application with the Environmental Protection Agency for State and Federal grants to construct the proposed sewage treatment and handling facilities. The Cities of Silvis and East Moline shall immediately upon the adoption of this Order, resubmit or amend, as necessary, their applications for both State and Federal grants to insure that the ordered projects may receive prompt consideration. That the Agency shall consider or reconsider such grant applications, or amendments thereto, on file or to be filed and shall assign said projects the highest appropriate priority under existing criteria.

9. The City of East Moline agrees and binds itself to provide service for the treatment of domestic wastes and sewage to the City of Silvis in a way which is consistent with the requirements of the State regulations, and consistent further with all terms of this Order, by a date no later than the completion of the interceptor main from the City of Silvis to the City of East Moline's sewage treatment plant, and the completion of the new primary treatment facilities by the City of East Moline whichever shall come later.

10. The Cities of Silvis and East Moline shall not permit the construction of any new sewers or other source of waste to their facilities, or any increase in the strength or concentration of waste discharged to their facilities unless permitted so to do, either by variance or otherwise.

11. That the Environmental Protection Agency acknowledges mitigating circumstances in the delay by the City of Silvis in bringing itself into compliance with the Environmental Protection Act and all other applicable State regulations and acts. That said City has cooperated fully in all hearings and pre-hearing conferences in an attempt to arrive at the best possible solution, and It Is Therefore Ordered by the Board that no fine or other sanction be levied against the City of Silvis.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 22<sup>nd</sup> day of August, 1972, by a vote of 5-0.

