

ILLINOIS POLLUTION CONTROL BOARD

July 18, 1996

IN MATTER OF:)
)
PETITION OF THE CITY OF LASALLE) PCB 86-2
FOR EXCEPTION TO THE COMBINED) (CSO Exception)
SEWER OVERFLOW REGULATIONS)

JAMES A MCPHEDRAN OF ANTHONY C. RACCUGLIA & ASSOCIATES APPEARED ON BEHALF OF CITY OF LASALLE;

LISA E. MORENO APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On September 1, 1995, the City of LaSalle (LaSalle) filed a second amended petition (Am.Pet.) for exception to the combined sewer overflow (CSO) regulations at 35 Ill. Adm. Code 306.305(a) and (b). On November 27, 1995, the Board received a response to the petition (Ag. Rec.) from the Illinois Environmental Protection Agency (Agency) recommending that the Board deny the request for CSO exception.

On December 20, 1995, the Board denied LaSalle permanent exception to the CSO requirement and closed the docket. On January 23, 1996, LaSalle sought reconsideration of the Board's order and requested that a hearing be held. On February 2, 1996, the Agency filed a response which also asked that the Board reconsider and modify the December 20, 1995, opinion and order. The Agency also asked that this matter be set for hearing. On February 15, 1996 the Board granted reconsideration, vacated its December 20, 1995 opinion and order and set the matter for hearing.

Hearing was held before the Board Hearing Officer Deborah Frank on May 8, 1996. Briefs were filed by LaSalle and the Agency on June 4, 1996. The Agency's brief now recommends that permanent exception be granted with certain conditions.

The Board first received a request from LaSalle for a permanent exception to the CSO regulations on January 2, 1986, and on January 9, 1986, the Board accepted that petition. A public hearing was held on July 21, 1986. Additional information was provided by LaSalle on August 21, 1986. On April 1, 1987, the Board granted a temporary CSO exception to LaSalle with conditions and retained jurisdiction over the proceeding.

For the reasons discussed below the Board will grant a permanent exception to 35 Ill. Adm. Code 306.305(a) regarding first flush of storm flows and 35 Ill. Adm. Code 306.305(b) for LaSalle's CSO outfall 007 and CSO outfall 006A. The Board will further grant an

exception to the compliance deadlines of 35 Ill. Adm. Code 306.306 for CSO outfall 003 subject to the conditions discussed below.

BACKGROUND

The City of LaSalle is located in LaSalle County along both sides of Illinois Route 351 from the north bank of the Illinois River to a point just south of Interstate Route 80. The Illinois River flows from east to west along the south boundary of the community.

The Board has previously discussed in detail the relevant background information in this proceeding. Rather than repeat that information here, the Board hereby incorporates by reference in this opinion the Board's April 1, 1987 and November 3, 1994, opinions and orders (In the Matter of: Petition of the City of LaSalle for Exception to Combined Sewer Overflow Regulations, 77 PCB 21, PCB 86-2; _ PCB ___, PCB 86-2). The Board directs interested persons to those previous decisions for a more comprehensive review.

CSO REGULATIONS

The CSO regulations are contained in 35 Ill. Adm. Code 306. Section 306.305 provides as follows:

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violations of applicable water standards unless an exception has been granted by the Board pursuant to Subpart D.

Sufficient treatment shall consist of the following:

- a) All dry weather flows, and the first flush of storm flows as determined by the Agency, shall meet the applicable effluent standards; and
- b) Additional flows, as determined by the Agency but not less than ten times to [sic] average dry weather flow for design year, shall receive a minimum of primary treatment and disinfection with adequate retention time; and
- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or
- d) Compliance with a treatment program authorized by the Board in an exception granted pursuant to Subpart D.

Section 306.306 sets forth specific timeframes for compliance with the provisions of Section 306.305.

Subpart D sets forth the CSO exception procedures. Section 306.350 states that an exception shall be granted by the Board based upon "water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge". Section 306.360 allows the discharger to file a petition for an exception either singly, or jointly with the Agency. In order for a discharger to receive a CSO exception, a certain level of justification for the exception is required to be submitted. This level of justification differs depending on whether the discharger filed a single or joint petition for CSO exception. The level of justification required of a joint petition is set forth in Section 306.362 which provides for a demonstration under Section 306.361(a) (i.e., minimal discharge impact) which is not available to single petitioners. LaSalle as a single petitioner, justifies its claim for a CSO exception based on Section 306.361(b), (c) and (d).

Section 306.361(d), applicable to single petitioners under Section 306.362, provides that a discharger may establish that because special circumstances exist, a detailed water quality evaluation (required pursuant to Sections 306.361(b) and (c)) would be inapplicable for reasons of irrelevancy or the expense of data collection in relation to the relevancy of the data.

BOARD'S 1987 OPINION

The Board's April 1, 1987 opinion (1987) indicated that the Agency testified that LaSalle did take all the necessary steps to qualify as joint petitioners with the Agency, including submitting a Phase I study on October 5, 1983 and a Phase II Study on October 23, 1984. (1987 at 2.) However, the Agency chose not to co-petition with LaSalle because of the late date at which LaSalle's petition was received, and because of Agency concerns related to whether water quality and other environmental impacts will be alleviated after the City's proposed improvements are completed. (*Id.*) Further, Mr. Tim Zook of the Agency testified that although a detailed CSO impact study (i.e., Phase III Study) was not conducted, pursuant to Section 306.361 (b) and (c), a study prepared for LaSalle by Serco Laboratories does give substantial information concerning water quality impacts.

The Board in its 1987 opinion also detailed the compliance options and the cost effectiveness of each option. (1987 at 5-7.) The Board in the 1987 opinion held that LaSalle had not justified a permanent CSO exception, but had justified a temporary CSO exception with conditions. Among other conditions, the Board order required an amended petition be filed by March 1, 1990, as well as requiring LaSalle to construct and operate improvements to its wastewater collecting system, and continue monitoring. On March 22, 1990, the Board extended until March 1, 1991, the deadline for the amended petition.

BOARD'S 1994 OPINION

In the amended petition of March 1, 1991, LaSalle stated that improvements have resulted in the elimination of all dry weather overflows. (November 3, 1994 opinion and order (1994) at 2.) LaSalle pointed out that since the Board granted the temporary CSO exception in 1987, LaSalle has constructed and was operating improvements to its wastewater collection system and treatment plant. (*Id.*) LaSalle also provided information regarding improvements to the wastewater treatment plant which increased the design average flow of the plant from 2.2 MGD to 3.3 MGD. (*Id.*) However, the design maximum flow was decreased from 12 MGD to 9.1 MGD. (*Id.*)

LaSalle stated that the 11th Street Pump station and the M & H Outfall have been eliminated by installing a diversion structure near the location of the 11th Street Pump Station, routing all existing sewers which were tributary to the Pump Station through this structure, and abandoning the M & H Pipe in place. (1994 at 2.) A 60" overflow pipe at the 11th Street overflow was also installed south of the old M & H Overflow pipe. (*Id.*) In 1991, LaSalle also maintained that construction involving the Union Street interceptor, the Canal Street interceptor, and the Creve Coeur Street Diversion structure upgraded the system and decreased overflows. (*Id.*)

To further reduce the possibility of overflows, LaSalle had implemented a policy that any major street repair would involve new storm sewers as well as adding a street sweeping program to remove debris before the debris can enter the sewer. (1994 at 2-3.) Finally, LaSalle stated that its population had decreased by approximately 6.3% since the 1980 census and one large industrial user has been lost, while a second industrial user had significantly upgraded its pre-treatment facility and a third is presently subject to a compliance plan to install a pre-treatment facility. (1994 at 3.)

In November 1994, the Board found that LaSalle's March 1, 1991 amended petition lacked sufficient information to grant a permanent CSO exception as there were some areas where dry-weather overflows may be occurring. (1994 at 4.) The Board stated:

The Board is particularly concerned in that LaSalle was offered an opportunity to update the information before the Board in June of this year. LaSalle choose not to file any further information with the Board. The Board finds that LaSalle has failed to provide necessary data to allow the Board to determine what impact the requested exception will have on the environment. Therefore, the Board will not grant a permanent CSO exception at this time. Instead, the Board will accept the Agency's recommendation and extend the temporary exception with certain conditions.

(1994 at 4.)

The Board's 1994 order set forth eight conditions which included a requirement that LaSalle shall eliminate all dry-weather overflows as well as providing any raw data LaSalle has with respect to monitoring outfalls 003, 004, 006, 006A and 007. (1994 at 6.) Further,

the Board's order required LaSalle to repair outfall 006, prior to performing stream inspections, so the flow can properly enter the Little Vermilion River. (*Id.*) The Board also directed LaSalle, in consultation with the Agency, to: design and construct improvements at CSO outfalls 006 and 004 (5th Street and Marquette Street) to permanently eliminate the dry weather overflows at these locations by March 1, 1995; complete a Phase II report as outlined in 35 Ill. Adm. Code 375.203 and submit it to the Agency by May 15, 1995; and complete and submit to the Agency a Plan of Study (POS) for a Phase III Evaluation at each CSO outfall location by December 1, 1994. (*Id.*)

SECOND AMENDED PETITION

In general, the second amended petition states that LaSalle has continued the policy of street sweeping and upgrading storm sewers. (Am. Pet. at 6-7.) LaSalle reiterates that certain industrial users have ceased operations while other industrial users have upgraded pretreatment facilities. (Am. Pet. at 6.) Further, LaSalle states that it has received recent approval from USEPA of "upgraded standards regarding its wastewater treatment plant". (*Id.*)

Specifically, LaSalle submitted information regarding each of the conditions from the Board's 1994 order. Regarding Condition 1, which required that LaSalle eliminate all dry-weather overflows, LaSalle maintains that it has eliminated all dry-weather overflows. (Am. Pet. at 10.) LaSalle states that it has removed the Marquette Street outfall (004) from the combined sewer system and sealed the Fifth Street outfall. (*Id.*) LaSalle maintains that "any flow currently existing with an outlet pipe presently, does not originate from any portion of any remaining combined system". (*Id.*) LaSalle admits that a "slight flow" was noticed during dry weather at the Creve Coeur Street outfall (003); however, according to LaSalle an investigation determined that the flow did not originate from the combined system. (*Id.*) Rather, LaSalle speculates that the flow originates from LaSalle's water distribution system. (*Id.*)

Conditions 2 and 3 granted LaSalle a temporary CSO exception until December 1, 1995 from 35 Ill. Adm. Code 306.305(a) regarding the first flush of storm flows and from 35 Ill. Adm. Code 306.305(b) and required LaSalle to submit an amended petition on or before September 1, 1995. LaSalle timely filed this amended petition.

Condition 4 required LaSalle to provide any raw data it has with respect to monitoring outfalls 003, 004, 006, 006A and 007. LaSalle submitted summaries of the data as Exhibits A and B to the amended petition filed on September 1, 1995. (Am. Pet. at 11.) Condition 5 required LaSalle to repair outfall 006, prior to performing stream inspections, so the flow can properly enter the Little Vermilion River. LaSalle states that outfall 006 was eliminated on November 15, 1994. (Am. Pet. at 11.)

Condition 6 set forth several requirements for LaSalle including a requirement to design and construct improvements at outfalls 006 and 004 (5th Street and Marquette Street) to permanently eliminate the dry weather overflows at these locations by March 1, 1995. As

stated above, LaSalle maintains that it has eliminated all dry-weather overflows. (Am. Pet. at 11.)

Condition 6(b) required LaSalle to complete a Phase II report as outlined in 35 Ill. Adm. Code 375.203 and submit to the Agency by May 15, 1995. LaSalle indicates that it completed inspection for low flow events in September of 1994; however, stream and environmental conditions have not resulted in an overflow at outfall 007. (Am. Pet. at 11.) Therefore, LaSalle asserts it was unable to fully comply with condition 6(b). (*Id.*)

Condition 6(c) required LaSalle to complete and submit to the Agency a Plan of Study (POS) for a Phase III Evaluation at each CSO outfall location by December 1, 1994. LaSalle states that a Phase III stream study was submitted to the Agency by December 1, 1994. (Am. Pet. at 11.) According to LaSalle, work associated with the study is being completed and data in existence at the date of the filing of the amended petition was included in Exhibit B to the petition. (*Id.*)

Condition 6(d) prohibited expansion of the service area tributary to the combined sewers and condition 6(e) required LaSalle to continue its monitoring of the combined sewer overflows on a weekly basis and after every major rainfall. LaSalle states that no extensions of service have been allowed and monitoring has been continued. (Am. Pet. at 12.) LaSalle has submitted copies of all monitoring reports to the Agency and included a summary of the reports in Exhibit A. (*Id.*)

The remaining conditions in the Board's 1994 order concerned procedural considerations and LaSalle simply acknowledges those conditions in the second amended petition. (Am. Pet. at 12.) LaSalle also states that it remains willing to "continue to be alert to any additional issues that may arise". (Am. Pet. at 12.) As an example of LaSalle's diligence, LaSalle reportedly "spent considerable time investigating potential solutions" to a recent increase in the frequency and amount of backups. (*Id.*) LaSalle further indicates that it has recently appointed a full-time city engineer with "considerable experience in environmental matters". (*Id.*)

MAY 8, 1996 HEARING

Mr. William Etzenbach testified on behalf of LaSalle and indicated what additional measures LaSalle would undertake to correct ongoing problems at CSO outfalls 007, 006A and 003. (Tr. at 76.) At CSO outfall 007, in dry weather there is infiltration of groundwater into the discharge pipe. (Tr. at 78.) The discharge is contaminated primarily with metals. (Tr. at 78-79.) Mr. Etzenbach testified that LaSalle will dam the pipe at the bottom and pump the infiltrations back into the sewage system for treatment. (Tr. at 79.) The estimated cost of the pumping station is \$70,000. (Tr. at 81.) Mr. Etzenbach testified that LaSalle will have the facility designed and plans submitted to the Agency for a construction permit by December 31, 1996, with completion of the project by December 31, 1997. (Tr. at 92.)

With regard to problems identified in the Agency response to the discharge at CSO outfall 006A, Mr. Etzenbach testified that the "visual appearance leaves nothing to be desired". (Tr. at 80.) However to insure that no further problems may occur, LaSalle is prepared to install a hand raked bar screen. (Tr. at 80.) LaSalle further proposes that the bar screen be visited on a weekly basis and after any rainfall event that might cause an overflow. (*Id.*) Such visits would allow crews to rake the bar screen, raking the material into the sewer system and performing remedial action if necessary. (Tr. at 80-81.) The cost of installing the bar screen is estimated at \$5,600. (Tr. at 81.) Mr. Etzenbach testified that the bar screen could be fabricated and installed by the end of 1996. (Tr. at 92.)

Mr. Etzenbach testified that LaSalle does not have enough solid information to design a plan for CSO outfall 003 at this time; however, LaSalle does have a two-phase plan for proceeding with bringing CSO outfall 003 into compliance. (Tr. at 82.) First, LaSalle will construct a bar screen in the overflow manhole to be visited and maintained in the same manner as the bar screen for outfall 006A. (*Id.*) Mr. Etzenbach testified that the bar screen would provide immediate relief. (Tr. at 83.) Second, LaSalle would capture the entire first flush and provide a secondary treatment and capture the next ten times average dry weather flow and provide primary treatment. (Tr. at 83-84.) The second phase will require additional investigation and study. (Tr. 82-84.) Mr. Etzenbach testified that a very rough estimate for the cost of proceeding with this plan would be just over \$3,000,000. (Tr. at 89.) Mr. Etzenbach testified that phase one could be completed by December 31, 1996. (Tr. at 92.) Mr. Etzenbach stated that the first flush rate and volume, and dry weather flow monitoring, should be completed by June 30, 1997, and construction alternatives by December 31, 1999. (Tr. at 92-93.) LaSalle would then choose the best plan by December 31, 2000, with permits and financing obtained by December 31, 2001. (*Id.*)

AGENCY RESPONSE

After the Board issued the December 20, 1995 order denying LaSalle a permanent exception, the Agency joined LaSalle in asking the Board to reconsider the December 20, 1995 order. The Agency also joined in LaSalle's request for hearing. For the record, the Board notes that the Agency, in its initial response to the amended petition, stated that the Agency "cannot recommend" that the temporary exception to the CSO regulations be extended nor can the Agency recommend that LaSalle be granted a permanent CSO exception. (Ag. Rec. at 1.) Also for the record the Board will summarize the concerns raised by the Agency in the initial response. However, at hearing and in the Agency's post-hearing brief, the Agency indicated that it now supported LaSalle's request for exception with certain conditions. (Tr. at 102; Resp. Br. at 1.)

Response

The Agency acknowledges that LaSalle "has made significant improvements in its overall CSO" system. (Ag. Rec. at 7.) However, the Agency is concerned that discharges

from certain CSO outfalls still apparently cause sludge deposits in the Illinois and Michigan Canal (I & M Canal). (*Id.*)

The Agency indicated particular concerns about the conditions at CSO outfall 003 which discharges into the I & M Canal. (Ag. Rec. at 3-4.) By LaSalle's own admission dry-weather flow is occurring at this outfall apparently from the potable water distribution system. (Ag. Rec. at 4.) The Agency is concerned that this is a potential cross-connection which is prohibited by regulation. (*Id.*) In addition, the Agency points to the observations made by LaSalle's personnel when carrying out a low stream flow inspection in 1994.¹ According to the inspection:

A general overall inspection of the outfall area indicated the presence of rags, paper and feminine hygiene products. A smell similar to that found in a bar screen building was present. The water in these pockets was a milky green color. There were also isolated areas of turbid green water with debris. Probing of the bottom sediment, which appeared to be a sandy soil, indicated the presence of fresh and partially deteriorated organic material. This sediment was black, gritty and had a septic odor. Approximately twenty percent of the bed appeared to contain these deposits which were 1/4 inch in depth in an area of stream about 300 feet long.

Exhibit A, par. 6.1-1; Ag. Rec. at 4-5.

In addition to the Agency's concerns involving outfall 003, the Agency is also concerned about the conditions around outfalls 006A and 007. (Ag. Rec. at 5.) In the area of outfall 006A, according to LaSalle's inspections, is being used as an illegal dump. (Exhibit A, par 6.2-1; Ag. Rec. at 5.) The Agency believes that additional Phase II stream inspection should be made in this area to insure that the debris is not masking impacts from the CSO. (Ag. Rec. at 5.) Outfall 007 also has evidence of dry-weather flows, apparently due to groundwater infiltration from an old industrial site. (Ag. Rec. at 6.) The Agency is concerned that the outfall pipe may be serving as a conduit for transporting potentially hazardous materials directly to the Little Vermilion River. (*Id.*)

Hearing and Agency Post-Hearing Brief

At hearing, Mr. Dean Studer testified on behalf of the Agency. (Tr. at 102.) Mr. Studer indicated that the compliance plans testified to by Mr. Etzenbach on behalf of LaSalle were acceptable to the Agency. (Tr. at 102-107.) Mr. Studer further testified that the timeframes given for completion of the compliance plans were realistic and acceptable to the Agency. (*Id.*)

¹ The inspection is discussed in Exhibit A to LaSalle's second amended petition (Exhibit A) titled "Update of Report of Monitoring Program to Comply with Illinois Pollution Control Board Order No. 89-2 April 1, 1987."

The Agency, in its post-hearing brief, recommends that LaSalle be granted a permanent exception to 35 Ill. Adm. Code 306.305(a) regarding first flush of storm flows and 35 Ill. Adm. Code 306.305(b) for CSO outfalls 006A and 007. (Resp. Br. at 1.) The Agency also recommends that LaSalle be granted an exception to the compliance deadlines of 35 Ill. Adm. Code 306.306 for CSO outfall 003. (*Id.*) The Agency further recommends conditions to be included in the exceptions. (Resp. Br. at 7.) The conditions recommended by the Agency set forth the plans for compliance testified to by Mr. Etzenbach. (*Id.*)

DISCUSSION

As previously stated a CSO exception shall be granted by the Board based upon "water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge". (Section 306.350.) LaSalle has made significant progress in correcting the deficiencies in LaSalle's sewer overflow systems. LaSalle has established that an exception is economically justified and the environmental impact of the permanent exception has been minimized. LaSalle has addressed concerns of the Agency and the Board and LaSalle has committed to correcting the remaining problems at outfalls 003, 006A and 007 within a specific timeframe. Therefore, the Board will grant permanent exception to 35 Ill. Adm. Code 306.305(a) regarding first flush of storm flows and 35 Ill. Adm. Code 306.305(b) for CSO outfalls 006A and 007. The Board also grants LaSalle an exception to the compliance deadlines of 35 Ill. Adm. Code 306.306 for CSO outfall 003, subject to the conditions set forth in the Agency's brief. This docket is closed.

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

ORDER

The City of LaSalle is hereby granted an exception from the combined sewer overflow regulation of 35 Ill. Adm. Code 306.305(a) as it relates to the first flush of storm flows and from 35 Ill. Adm. Code 306.305(b) for CSO outfall 006A and CSO outfall 007, and from the compliance dates of 35 Ill. Adm. Code 306.306 for CSO outfall 003, subject to the following conditions:

1. LaSalle shall:
 - a. Install bar screens and maintain for CSO outfall 006A and CSO outfall 003 no later than December 1, 1996.
 - b. Install a pump station capable of transporting all dry weather flows from CSO outfall 007 no later than December 31, 1997.

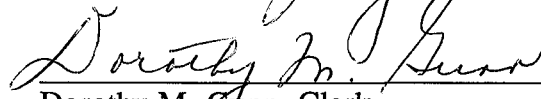
- c. Complete a monitoring program at CSO outfall 003 sufficient to determine first flush rate and dry weather flow volumes no later than June 30, 1997.
 - d. Develop and select a compliance alternative for CSO outfall 003 no later than December 31, 1999.
 - e. Complete design and submit a construction permit to IEPA for the selected CSO outfall 003 compliance alternative no later than December 31, 2000.
 - f. Complete construction of the selected compliance alternative for CSO outfall 003 no later than December 31, 2003.
2. The grant of exception does not preclude the Agency from exercising its authority to require as a permit condition a CSO monitoring program sufficient to assess compliance with this exception and any other Board regulations and other controls, if needed, for compliance, including compliance with water quality standards.
 3. This grant of exception is not to be construed as affecting the enforceability of any provisions of this exception, other Board regulations, the Environmental Protection Act, or the federal Clean Water Act.

IT IS SO ORDERED.

Board Members J. Theodore Meyer and M. McFawn dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 18th day of July, 1996, by a vote of 5-2.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board