

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1982

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Petitioner,)
)
v.) PCB 80-107
)
CITY OF MONMOUTH, a municipal)
corporation,)
)
Respondent.)

MR. STEPHEN GROSSMARK, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE PETITIONER.

MR. RONALD C. TENOLD, STANDARD & TENOLD, ATTORNEYS-AT-LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by D. Anderson):

This matter comes before the Board upon a complaint and amended complaint filed April 6, 1979 and November 10, 1979 by the Illinois Environmental Protection Agency (Agency) naming as Respondent the City of Monmouth (Monmouth). The amended complaint alleges violations of Rules 403, 404(c), 901 and 1201 of Chapter 3: Water Pollution and §§12(a) and 12(f) of the Illinois Environmental Protection Act (Act) in connection with operation of a wastewater treatment plant known as the "North Plant". A public hearing was held at Monmouth on October 14, 1981 at which time the parties presented a statement of stipulated settlement. Members of the public attended the hearing but did not comment (R. 6).

This action was originally docketed as PCB 79-79. On May 15, 1980 the Board severed two counts from the four count amended complaint (38 PCB 261). Counts I and II of the amended complaint were redocketed as PCB 80-107, this action. Counts III and IV were decided September 18, 1980 as PCB 79-79. Monmouth was assessed a penalty of \$2,500 in connection with violations involving operation of its "municipal wastewater treatment facility". PCB 80-107 concerns similar allegations involving the "North Plant."

Monmouth has filed a related variance petition in PCB 79-249. It requests a variance to allow operation during upgrading of the North Plant. These matters were consolidated for hearing. The Board will incorporate the record in PCB 79-249 by reference. The facility description, compliance plan and variance will be the subject of a separate Opinion and Order.

The North Plant presently processes wastewater produced by commercial and industrial facilities in and near Monmouth, principally a very large slaughterhouse operated by Wilson Foods Corporation, which is not a party to this action. The North Plant discharges to Markham Creek, a tributary of Cedar Creek, Henderson Creek and the Mississippi River. From April 25, 1975 through July 1, 1978 Monmouth discharged pursuant to NPDES Permit No. IL 0036218.

Count I alleges: discharge without an NPDES permit in violation of §12(f) of the Act and Rule 901; discharge of BOD and TSS¹ in excess of NPDES permit limitations of 10 and 12 mg/l²; discharge of BOD and TSS in violation of BOD and TSS effluent standards of Rule 404(c); turbid, green discharge in violation of Rule 403; and, a resulting violation of §12(a) of the Act.

Count II alleges: failure to submit fecal coliform monitoring results as required by NPDES permit condition; failure to use flow proportioned composite samples as required by NPDES permit condition in violation of §12 of the Act; and, operation without the correct classification of operator in violation of Rule 1201.

Monmouth applied for NPDES permit reissuance on April 11, 1978, but no permit had been issued through November 10, 1981. The Agency alleges, and Monmouth does not deny, that it discharged without an NPDES permit during this period in violation of §12(f) of the Act and Rule 901.

Section 16 of the Administrative Procedure Act has been held applicable to NPDES permits (Borg-Warner v. IEPA, 3rd Dist., October 8, 1981). This provides that permits continue in force where timely reapplication has been made. Rule 902(i) of Chapter 3 requires the renewal application to be made at least 180 days prior to expiration; Monmouth filed its application about 80 days before expiration. Although the parties have not addressed this issue, the Board assumes that this is

¹BOD is 5-day biochemical oxygen demand; TSS is total suspended solids.

²The complaint is not clear as to what Rule requires compliance with NPDES limitations; Rule 410(a) is not alleged. Section 12(f) and Rule 901 are alleged, although not precisely in connection with NPDES limitations. The Board construes the complaint as alleging a violation of §12(f) and Rule 901.

the reason why Monmouth has not denied it is in violation of the requirement to obtain a permit.

Rule 902(i) has been amended to delete the subparagraph which absolutely prohibited reissuance where a facility was not in compliance with conditions of an expiring permit (R79-13, May 15, 1980, 38 PCB 341, 3 Ill. Reg. No. 34, p. 159, August 22, 1980). The Board intended to allow permit reissuance in cases such as this. The Agency supported this amendment. There is no explanation as to why the permit has not been renewed in this case. In the variance matter the Board will order the permit issued pursuant to Rule 914 of Chapter 3.

The Board finds Monmouth in violation of §12(f) of the Act and Rule 901 for failure to have an NPDES permit for its discharge between July 1, 1978 and November 10, 1981. For the reasons discussed above, the Board regards this as a technical violation resulting only from the late application and not meriting any substantial penalty.

Monmouth has admitted that it violated NPDES permit limitations and Board standards of Rule 404 on many occasions between October, 1977 and July, 1981. These are summarized below. The levels were considerably in excess of standards and permit conditions as is set out in greater detail in connection with the variance.

<u>Parameter</u>	<u>Permit Condition^{1, 2}</u>		<u>Board¹ Standard</u>
	<u>Daily Average</u>	<u>Daily Maximum</u>	
BOD	10 mg/l	25 mg/l	10 mg/l
TSS	12 mg/l	30 mg/l	12 mg/l

Monmouth has also admitted that from October 1, 1977 through June 8, 1978 it has at times discharged a green, turbid effluent in violation of Rule 403.

Monmouth has further admitted that it failed to submit fecal coliform monitoring results from October 1977 through August, 1978, or to use flow proportioned composite samples as required by NPDES permit. Monmouth admits to violation of Rule 1201, although there is no specific factual admission concerning operation without the proper classification of operator.

¹Rule 404(c); based on monthly averages [Rule 404(h)].

²Daily Average is the average of daily composites over a 30-day period.

Based on the facts as set forth in the stipulation the Board finds that Monmouth has violated Rules 403, 404(c), 901 and 1201 of Chapter 3 and §§12(a) and 12(f) of the Act, substantially as alleged in the complaint. The Board recognizes that certain of these violations are mutually exclusive, especially the findings of discharge without a permit at the same time as violations of permit conditions. The Board has found these violations in order to effectuate the intent of the parties in the settlement agreement.

The parties have provided a compliance plan in the stipulation and in the variance matter. This will not be set forth in detail in this Opinion. Monmouth will be ordered to comply with those variance conditions it has agreed to in the stipulation. These include the following:

1. Interim effluent standards (Paragraph 19);
2. Three-year upgrading in accordance with Attachment A;
3. Employment of an operator certified both as an industrial operator and a Class 1 operator;
4. Operator to be at the plant 5 1/2 days per week;
5. Establishment of laboratory facilities;
6. Overflow structure in old third stage cell to be sealed;
7. Sampling, analysis and monitoring in conformance with state and federal standards.

The compliance plan in this enforcement action centers on BOD and TSS problems. The plant's most serious problem is with ammonia nitrogen. However, the Agency has not charged Monmouth with violation of Rules 402.1 and 203(f) with reference to ammonia. The ammonia compliance plan is dealt with in the variance petition.

The parties apparently contemplated two different compliance orders in the variance and enforcement actions. The Board has combined these in the variance order. The BOD/TSS program resulting from the enforcement action will be a condition of the variance. Compliance with these conditions will be ordered in this action.

The parties have stipulated to a civil penalty of \$2,500. They have stipulated that this is an appropriate amount and that it properly balances considerations which must be taken into

account in determining civil penalties. They have agreed that it is technically practical and economically reasonable to ensure compliance as set forth in the stipulation and amended variance petition.

The Board accepts the stipulation and penalty pursuant to Procedural Rule 331. The Board has considered the factors enumerated in §33(c) of the Act in reviewing the penalty and compliance program.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondent, the City of Monmouth, has violated Rules 403, 404(c), 901 and 1201 of Chapter 3: Water Pollution, and §12 of the Act, substantially as alleged in Counts I and II of the amended complaint.

2. Respondent shall comply with the terms and conditions of the settlement agreement, which is hereby incorporated by reference. In particular, Respondent shall comply with paragraphs 5, 6 and 7 of the Order in PCB 79-249.

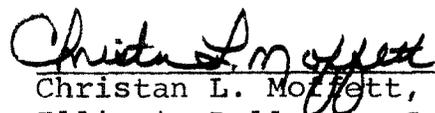
3. Respondent shall comply with the conditions of NPDES Permit No. IL 0036218 from the date it is reissued.

4. Within 35 days of the date of this Order, Respondent, City of Monmouth shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$2500 which is to be sent to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Pollution Control Board, hereby certify that the above Opinion and Order were adopted this 21st day of January, 1982 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board