

ILLINOIS POLLUTION CONTROL BOARD
January 18, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-238
)
CITY OF DECATUR and)
DECATUR SANITARY DISTRICT,)
)
Respondents.)

MR. JOHN VAN VRANDEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

GREANIAS, BOOTH, GREANIAS & BURTON, ATTORNEYS AT LAW (MR. GUS T. GREANIAS, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Werner):

This matter comes before the Board on the September 19, 1977 Complaint brought by the Illinois Environmental Protection Agency ("Agency") alleging that: (1) on or about July 16, 1976 and July 22, 1976, the Respondents caused or allowed the discharge of contaminants from their combined sewers into the Sangamon River so as to cause the death of fish; and (2) on or about July 13, 1977, the Respondents caused or allowed the discharge of contaminants from their combined sewers and from the City of Decatur's water treatment plant's lime softening process sludge lagoons into the Sangamon River so as to cause the death of fish in violation of Section 12(a) of the Illinois Environmental Protection Act ("Act"). Hearings were held on this matter on December 5, 1977 and on April 4, 1978.

The City of Decatur and the Decatur Sanitary District are both Illinois municipal corporations. The City of Decatur owns and controls a water treatment plant which contains several lime softening process sludge lagoons. The Decatur Sanitary District and City of Decatur own and control combined sewers which discharge into the Sangamon River.

I. FISH KILL OF JULY 16, 1976

At the hearing, the Agency's first witness (called under the Board's Procedural Rule 325 pertaining to adverse witnesses) was Mr. Gene Henry - a field supervisor employed by the Decatur Sanitary District. Mr. Henry testified that certain sections of the southeast combined sewer are owned by the City of Decatur and some portions are owned by the Decatur Sanitary District. (Record, p. 10; p. 19; See: Complainant's Exhibit 1). He indicated that various outfall sewers take storm water and overflow from sewers, and when the level of materials in those sewers reach a certain point, the overflow finds its way into the Sangamon River (the "river"). (Record, p. 16).

The Complainant's second witness was Mr. Richard A. Ryczek, an environmental protection engineer employed by the Agency. Mr. Ryczek testified that on July 17, 1976, he investigated the fish kill in the Sangamon River near the City of Decatur which was reported on July 16, 1976.

Mr. Ryczek testified that, during the course of his investigation, he observed and took water samples: (1) at the point of discharge from the Edward Street combined storm sewer; (2) upstream from the storm sewer; and (3) downstream from the storm sewer. Upstream from the storm sewer, he observed that the water was relatively clear, live fish were present, there were no dead or distressed fish and no odor. (See: Complainant's Exhibits 2 and 3). At the Edward Street combined storm sewer, Mr. Ryczek observed that the sewer discharge "had a black cast to it" and an odor. (Record, p. 29). Moreover, "the channel bottom was covered with deposits of black solid from which gas bubbles were rising." (Record, p. 29). He noted a "black color, septic odor," and "sludge like appearance" at the Edward Street storm sewer. (See: Complainant's Exhibits 4 and 5). Downstream from the storm sewer, near the Route 48 bridge, "the river was a gray or gray/black in appearance, and there was a sewerage or septic odor associated with it." (Record, p. 26). "Between 10 and 20 dead or distressed fish" were observed at this point. (Record, p. 26-27). Mr. Ryczek stated that he then proceeded further downstream to a gravel pit site located between the Route 48 bridge and the Decatur Sanitary District and observed "hundreds" of dead and distressed fish. (Record, p. 30). Mr. Ryczek noted in his report that downstream from the storm sewer, the water was a "dark color;" there were "numerous dead fish" and "distressed fish gulping air." (See: Complainant's Exhibits 6 and 7). Further downstream from the storm sewer, near Stephens Creek, Mr. Ryczek noted that the water was a "gray-black color" and that "dead and distressed fish" were present. (See: Complainant's Exhibit 7).

Mr. Ryczek stated that, other than the discharges from the Edward Street storm sewer, he did not see any discharges into the river between the old dam and the Route 48 bridge. (Record, p. 33-34).

Mr. Ryczek also testified that he recorded the taking of the water samples on the requisite Agency forms, properly preserved the samples in the field, and turned over the samples and forms to the laboratory personnel at the Agency's laboratory in Champaign. (Record, p. 34-37; See: Complainant's Exhibits 2 through 8). In reference to a fish kill in the Sangamon River near Decatur on July 22, 1976, Mr. Ryczek indicated that he was involved in an investigation of this matter and that some dead fish were seen. (Record, p. 38-40).

The Complainant's third witness was Mr. Frank John Schmidt. Mr. Schmidt testified that he has the title Laboratory Manager I and is the supervisor of chemistry at the Agency's Champaign laboratory. (Record, p. 68-69). His testimony delineated the general laboratory methods that the Agency followed when the water samples arrived. (Record, p. 68-74).

Another Agency witness was Mr. Kenneth Lloyd Brummett, who was a District Fishery Biologist with the Illinois Department of Conservation at the time of the fish kills. Mr. Brummett testified that he investigated the fish kills of July 16, 1976 and July 13, 1977 and determined the number and value of the fish killed in accordance with standard Department of Conservation procedures. (Record, p. 117-124). He indicated that the monetary value per fish assigned to various sizes and species of fish is a standard "replacement value" set by the National Chapter of American Fisheries Society. (Record, p. 119). The "estimated total number of fish killed" is multiplied by the "value per fish" to obtain the total value of a particular size and species of fish. (See: Complainant's Exhibit 16 and Complainant's Exhibit 17).

Mr. Brummett's report on his investigation of the fish kill of July 16, 1976 stated that a heavy .45 inch rain had fallen on downtown Decatur on July 15, 1976 within a 10 minute period. (See: Complainant's Exhibit 17). At the hearing, it was mentioned that the Respondents have an NPDES permit to discharge overflows from the Edward Street combined storm sewer into the Sangamon River. (Record, p. 56; p. 98-99; See: Complainant's Exhibit 18). The regular storm sewer apparently could not handle the runoff after the "flash rain" and the overflow flushed sludge out of the old storm overflow sewer into the Sangamon River. The evidence indicates that, on July 16, 1976, a discharge from the Edward Street combined storm sewer to the Sangamon River was the cause of a fish kill just below Lake Decatur on the Sangamon River which extended for 1.8 miles and killed about 17,268 fish

(including many big carp and channel catfish) with an estimated value of \$3,061.47. (See: Complainant's Exhibits 17 and 18).

According to Mr. Ryczek's testimony, a flow of blackish water (having a bad odor) from the Edward Street combined storm sewer outlet just below the old dam on the Sangamon River below Lake Decatur was detected during the subsequent Agency investigation. (Record, p. 28-30). Black silt had been deposited on the stream bank and on the abutments of the Edward Street sewer outlet. (Complainant's Exhibit 17). Biochemical degradation of organic matter or sewage can readily result in the lowering of the dissolved oxygen in a stream. (Record, p. 46; p. 60-64). It appears that the addition of the rich, black silt (which has a high biochemical oxygen demand) from the Edward Street storm sewer outlet resulted in an insufficient concentration of dissolved oxygen in the river. (See: Complainant's Exhibits 2 through 8 and Exhibit 17). Dead fish were first found about three-quarters of a mile below the Edward Street sewer outlet and the last dead fish were found at the entrance of Stevens Creek. Agency personnel made dissolved oxygen tests at several stations and found very little or no dissolved oxygen in the river from the Edward Street storm sewer with the black discharge to the entrance of Stevens Creek. (See: Complainant's Exhibit 17). Upstream and downstream from this stretch, there was sufficient dissolved oxygen to support fish life and visual observations of live fish confirmed the lab tests on this point. (See: Complainant's Exhibits 2 through 8). Accordingly, the fish appear to have died from a lack of dissolved oxygen brought about by a discharge from the Edward Street combined storm sewer to the Sangamon River on June 16, 1976. Because of the limited nature of the testimony and evidence presented pertaining to the inter-related incident of July 22, 1976, and the fact that the Department of Conservation has attached no monetary value to any fish which might have been killed on that specific date, the Board finds that no purpose would be served by finding that a violation of the Act occurred on July 22, 1976. (See: Record, p. 38-44).

II. FISH KILL OF JULY 13, 1977

According to the testimony and written report of fishery biologist Kenneth Brunnett, the fish kill which occurred on July 13, 1977 extended for 4 miles and involved about 9,198 dead fish having an estimated value of \$766.70. (Record, p. 142-148; Complainant's Exhibit 16). On July 13, 1977, employees of the Decatur Sanitary District first discovered many dead and struggling fish in the river near the Route 48 bridge, and called Steve Baldwin (an Agency environmental protection specialist) to report that thousands of fish were dead or dying just below the dams on the Sangamon River

below Lake Decatur. (See: Complainant's Exhibit 16 and 18). There were also dead fish on both sides of the Route 48 bridge for a good distance. (See: Complainant's Exhibit 18). No water was coming over the dam at that time and the river elevation had subsided approximately 3 feet in the past hours (i.e., the river, because of a prolonged dry period, was at an abnormally low level and the air temperature was about 93° F.). Many of the dead fish were 2 and 3 feet out of water. (See: Complainant's Exhibit 18).

Mr. Stephen Edward Baldwin, one of the Complainant's main witnesses, testified that, in his capacity as an Agency environmental protection specialist, he investigated a fish kill in the Sangamon River near Decatur on July 13, 1977 after Mr. Charles Williams of the Decatur Sanitary District telephoned him at his Champaign office "advising of the circumstances." (Record, p.83). Mr. Baldwin testified that, during the course of his investigation, he observed pipes of about 18 inches in diameter which were discharging into the Sangamon River. He also testified that the origin of the discharges from the tiles was the City of Decatur municipal water lime lagoon. (Record, p. 86-92). At various nearby points where he took water samples, Mr. Baldwin noted that the water was cloudy, gray-white in color, and warm to touch, and that extensive lime sludge deposits were found around the discharge. There was no flow over the dam. (See: Complainant's Exhibits 9 through 11). At the sample point near the Edward Street storm sewer discharge, he noted that the water was slightly black in color; there were "black bottom deposits;" and noted "gas bubbles" and "un-natural odors." (Record, p. 89-90; See: Complainant's Exhibit 12). Near the Route 48 bridge, Baldwin noted "numerous dead fish" in the river and "on both banks." (See: Complainant's Exhibits 13 through 15). Mr. Baldwin stated that, prior to taking the water samples to the lab, he properly preserved them by putting them into a cooler and adding ice to the cooler for refrigeration purposes. (Record, p. 94).

Another Agency witness, Mr. Roy Parker Frazier, testified that he is the Laboratory Manager of the Agency's Champaign laboratory and described the laboratory routine that was used after Baldwin's water samples and "special analysis forms" were brought to the laboratory. (Record, p. 76-81; See: Complainant's Exhibits 9 through 15).

The Complainant also called on Mr. Richard P. Kaptain, the Assistant Manager-Engineer of the Sanitary District of Decatur, to testify (as an adverse witness under the Board's Procedural Rule 325). Mr. Kaptain testified that, at the request of the Agency,

about a week after the fish kill in question, he opened the dam (i.e., water was let out of Lake Decatur over the new dam) to allow more water into the Sangamon River to prevent possible fish kills, having been notified there were fish in distress in the river. (Record, p. 150-152). After the dam was opened, no fish kill occurred. (Record, p. 153).

Mr. Brunnett's testimony and written report indicated that "the dead fish started just below the old dam on the river" and "the kill ended just upstream from the mouth of Stevens Creek." The Sangamon River had "very little flow and it was reported that no water was going over the Lake Decatur dam" when the fish kill started. (See: Complainant's Exhibit 16). Water was subsequently released over the dam of Lake Decatur and brought the water level up in an attempt to partially rectify the situation.

* * *

In reference to the fish kills of July 16, 1976 and July 13, 1977, the Respondents have attempted to show (by extensive cross-examination of Complainant's witnesses) that the Complainant's case is inadequate by suggesting the existence of other potential injurious discharges into the Sangamon River from private sewers, storm water run-offs, and agricultural and natural drainage. (See: Record, p. 51). The Respondents have attempted to raise factual and legal questions pertaining to the methodology and conclusions of the lab tests, the observations of Agency personnel, the actual causation (i.e., etiology) of the death of the fish, the meeting of the burden of proof, etc. The attorney for the Respondents summarized their position as follows: "All of the evidence here is that somebody saw some fish in distress on the Sangamon River. The Sangamon River is not under the exclusive control of either of these Respondents. There are other sources of pollution that enter into this stream. They are not the custodians nor guarantors of the cleanliness of the Sangamon River ..." The Agency has "not shown what the fish died of. How can they say it was us who killed those fish?" (See: Record, p. 165-169). However, no evidence was introduced into the record by the Respondents in support of their position.

The Board believes that a preponderance of the evidence clearly shows that discharges on July 16, 1976 and July 13, 1977 from combined sewers owned by the City of Decatur and the Decatur Sanitary District and from the City of Decatur's lime softening process sludge lagoon reduced the level of oxygen in the Sangamon River and contaminated the water to a point which rendered the water injurious to fish. After due consideration, the Respondents' motion to dismiss the Complaint and the Respondents' motion for oral argument before the Board (which were referred back to the Board during the hearing of this case) are hereby denied. (Record, p. 163-169; p. 174-175; See: Board's Procedural Rules 308(d) and 308(e)).

In evaluating this enforcement action, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). The Board finds that, on July 16, 1976 and July 13, 1977, the Respondents discharged contaminants into the Sangamon River in violation of Section 12(a) of the Illinois Environmental Protection Act which resulted in two extensive fish kills. The Board hereby imposes no penalty against the Respondents. However, in accordance with Section 42(b) of the Act, the Board will require the Respondents to pay the reasonable value of the fish killed - \$3,828.17 - to the Game and Fish Fund of the State Treasury.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents are found to have violated Section 12(a) of the Illinois Environmental Protection Act on July 16, 1976 and July 13, 1977 which resulted in fish kills on the dates in question.
2. The allegation that the Respondents violated Section 12(a) of the Act on July 22, 1976 is hereby dismissed.
3. The Respondents shall cease and desist all further violations.
4. Within 45 days of the date of this Order, the Respondents jointly and severally shall pay to the Game and Fish Fund of the State Treasury the value of the fish killed, \$3,828.17, payment to be made by certified check or money order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of January, 1979 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board