

ILLINOIS POLLUTION CONTROL BOARD

June 10, 1981

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-105
)
CITY OF ABINGDON, an Illinois)
municipal corporation,)
)
Respondent.)

MS. MARY JO MURRAY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. DAVID R. MCDONALD, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed May 13, 1980 by the Illinois Environmental Protection Agency (Agency) naming as respondent the City of Abingdon. The complaint alleges violations by a municipal wastewater treatment plant of conditions of NPDES permit No. IL0020761, Sections 12(a), 12(b) and 12(f) of the Environmental Protection Act (Act) and Rules 203, 401, 402, 404(f)*, 501, 601(a), 602(b), 901 and 1201 of Chapter 3: Water Pollution. A public hearing was held on February 25, 1981 in the City of Abingdon, at which time a stipulation and proposal for settlement was presented. Members of the public attended but did not comment.

Abingdon is situated in Knox County and has a population less than 4000. It was issued NPDES permit No. IL0020761 on June 30, 1977. This authorized Abingdon's municipal wastewater treatment plant to discharge into Dago Slough, a navigable water and a water of the State. Dago Slough is apparently tributary to Cedar Creek and the Spoon River.

The following is a summary of the allegations of the complaint. Because there is considerable variation between the allegations and the admissions contained in the stipulation, the stipulation will be discussed in a series of footnotes following the outline of the allegations.

*Rule 404(f) has been repealed (4 Ill. Reg. no. 20, p. 53, effective May 7, 1980.)

<u>Count</u>	<u>Section/Rule</u>	<u>Dates</u>	<u>Summary</u>
I	§12(a), (b), (f) 501(c), 901	Oct. 1977- Aug. 1979	Failure to submit discharge monitoring reports (DMR's) as required by NPDES permit.
II	§12(a), (b), (f) 501, 901	Oct. 1977- Aug. 1979	Failure to monitor as required by permit.
III	§12(a) ^{1,2,3} 401(c), 404(f)	July 5, 1978 & Dec. 5, 1978	Violation of effluent standard for 5-day biochemical oxygen demand (BOD)
IV	§12(a) ⁴ 203(f), 402	Jan 6, 1978- May 13, 1980	Violation of water quality standard for ammonia nitrogen.
V	§12(a) ³ 401, 405	Jan. 6, 1978 ⁴ - May 13, 1980	Violation of effluent standard for fecal coliform.
VI	§12(a) 203(d), 402	July 5, 1978 ⁵ - May 13, 1980	Violation of water quality standard for dissolved oxygen.
VII	§12(a), (b), (f) 203(a), 402, 403, 901	Nov. 1, 1977 ⁷ - May 13, 1980	Violation of effluent limitation for settleable solids and water quality limitation for unnatural sludge.
VIII	§12(a), (b), (f) 601(a), 602(b) 901	Nov. 1, 1977- May 13, 1980	Raw sewage bypasses in violation of permit conditions and Board regulations.
IX	§12(b), (f) ⁹ 601(b), 901	Nov. 1, 1977- May 13, 1980	Failure to take reasonable measures to prevent spillage and to provide optimum operation and maintenance, in violation of permit conditions and Board regulations.
X	§12(b), (f) 901, 1201	Nov. 1, 1977 ¹⁰ - April 10, 1980	Failure to employ Class 3 operator.
XI	§12(f) 501(c), 901	Nov. 1, 1977 ¹¹ - May 13, 1980	Failure to submit grant progress reports as required by permit.

¹Abingdon also admits violation of Rules 410(a) and 901, although this is not alleged (Stip. ¶6).

²Abingdon also admits levels of suspended solids (TSS) in violation of §12(a) and Rules 401, 404(f), 410(a) and 901 (Stip. ¶7).

³Abingdon has admitted violations of Rule 401(c), the averaging rule. The Board accepts this admission, although one usually thinks of the violations as of the applicable effluent standard, the averaging rule being a matter of interpretation of the standard.

⁴Violations admitted only on January 6 and July 5, 1978 (Stip. ¶9).

⁵Violations admitted only on July 5, 1978 (Stip. ¶10).

⁶Abingdon also admits violation of Rule 410(a).

⁷Count VII admission relates to seven dates with respect to water quality violations and five dates with respect to effluent violations through August 1980 (Stip. ¶¶11, 12).

⁸Abingdon admits violations on four dates and during a seven month period in 1978 in connection with Count VIII, sewage bypasses (Stip. ¶13).

⁹Abingdon admits violation of §§12(a) and "19(f)" and Rules 601, 901 in connection with Count IX (Stip. ¶14).

¹⁰Abingdon admits violation of operator certification requirements from November 1, 1977 through March 19, 1980 (Stip. ¶15).

¹¹Abingdon admits failure to submit grant progress forms for June 30, 1978 through May 30, 1980, in violation of permit conditions, §12(f) and Rule 901.

The Board deems the complaint amended to conform to the proof which consists of the admissions of the stipulation. The Board finds Abingdon in violation of the permit conditions, Board Rules and the Act, substantially as alleged in the complaint as modified by the stipulation.

In connection with the settlement the parties have outlined a detailed compliance plan which imposes duties on both the Agency and Abingdon. The following is a summary of the settlement agreement:

Abingdon agrees to submit in timely fashion all DMR's and grant progress reports required by its NPDES permit and to collect samples in accordance with NPDES permit requirements (par. 18). The City is to take samples for submission to an Agency approved outside laboratory, which will prepare the DMR's (par. 19). Abingdon agrees to clean the bar screen three times daily or more frequently if necessary [par. 21(c)]. Abingdon agrees to maintain a chlorine residual of between 0.2 and 0.75 mg/l in the final effluent at all times and to provide proper maintenance of the Imhoff tank and to provide other maintenance as specified [par. 21(f)]. Abingdon agrees to take timely pre-grant and post-grant action so as to effect the rehabilitation of its system and facility at the earliest possible date (par. 23).

Within thirty days of the date of the agreement Abingdon agrees to make available a portable sludge pump and to take required steps concerning sludge in the final settling tank [par. 22(b), (c)].

Within ninety days of the date of the agreement Abingdon agrees to develop a comprehensive year-round sludge handling and management program to be approved by the Agency and to install a final settling tank sludge pump [par. 20(a), (b)].

Within 120 days of the agreement Abingdon agrees to install a properly designed velocity control weir to grit chamber and outlet. By September 1, 1981 Abingdon agrees to eliminate bypass to the receiving stream after the Parshall flume [par. 21(a), (b)].

Within 180 days of the agreement Abingdon agrees to monitor influent waste from Briggs Manufacturing for TSS and flow, and to provide a large capacity flow meter so that the total plant flow can be measured at all times [par. 21(d), (e)]. Within 180 days of the agreement Abingdon agrees to install audio high water level alarms and "tees" at the Monroe and Cherry Street lift stations and to vigorously enforce its sewer use ordinance and require connection to the city sewer by all residents within the city limits presently discharging sewage waste to ditches and/or storm sewers (par. 24).

Abingdon agrees to pay a penalty of \$4000. The first payment of \$1000 is to be paid within sixty days of the date of the Board Order and the next three installments of \$1000 each are to be due and payable two, four and six months, respectively, after the date of the first payment. Failure by the city to make timely payment results in the entire remaining amount becoming immediately due and payable. The Board construes this as referring to the actual date of first payment. If this date is missed, the entire \$4000 is immediately due and payable.

The Agency agrees that, pending completion of grant funded upgrading, Abingdon shall be allowed to discharge effluent of up to 20 mg/l BOD and 25 mg/l TSS (par. 22). The Agency also agrees that lift station overflows will be permitted during periods of hydraulic overloading until such time as grant funded upgrading is completed, providing the following conditions are met: lift stations are to be personally inspected by the superintendent of public works on a daily basis; Abingdon is to provide optimum operation and maintenance of the lift station; Abingdon is to provide an adequate supply of spare parts for pumps, motors, etc.; and, the city is to report every lift station overflow to the Agency within five days.

The time for completion of several increments of progress dates from the agreement which is not dated. The Board finds the agreement dates from April 20, 1981, the date of the cover letter from Respondent's attorney.

The proposed settlement agreement contemplates that Abingdon will be out of compliance with the Act and Board Rules for some time in the future. In particular Abingdon will be allowed to discharge BOD and TSS in excess of levels which are authorized by Rule 404 and will be allowed lift station overflows during periods of hydraulic overloading, in violation of Rules 601 and 602, as well as other possible violations of effluent and water quality standards. This noncompliance is to continue until completion of grant funded upgrading.

Section 33(b) of the Act specifically contemplates a compliance order which may include reasonable delay during which to correct a violation. This necessarily infers that the Board may enter an order in an enforcement action allowing a respondent to violate the Act and Board Rules.

Section 36(b) authorizes the grant of variances for up to five years upon a showing of arbitrary or unreasonable hardship. The settlement agreement in this case contemplates noncompliance until grant funded upgrading is completed. This could potentially lead to perpetual noncompliance if grant funding is never received or if construction is never completed. This is not a reasonable time within the meaning of Section 33(b). The Board will therefore limit the term of the compliance plan to five years. Thereafter, Abingdon must petition for a variance if it is not yet in compliance.

The Board recognizes the provision of the stipulation which conditions the admissions on Board acceptance of the settlement agreement. The Board assumes the parties do not intend perpetual noncompliance and anticipate prompt completion of grant funded upgrading. The Board has accepted and modified the agreement to effectuate the parties' intent. If this is not the case they may request reconsideration.

The settlement agreement authorizes 20/25 mg/l BOD/TSS and speaks of the Agency permitting lift station overflows. The agreement also contemplates modification of the existing sewage treatment plant and methods of operation. The compliance Order will not be construed as modifying the requirement to possess an NPDES permit and to obtain appropriate modifications or construction authorizations. The Agency will incorporate the compliance agreement in any modified or reissued NPDES permit.

The Board finds the stipulation and proposal for settlement, as modified, acceptable pursuant to Procedural Rule 331. In making its determination the Board has considered the factors enumerated in Section 33(c) of the Act, including the small size of Abingdon.

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

ORDER

1. The City of Abingdon is in violation of conditions of NPDES permit No. IL0020761 and Section 12(a), (b) and (f) of the Environmental Protection Act and Rules 203, 402, 404(f) 410 501, 601(a), 602(b), 901 and 1201 of Chapter 3: Water Pollution.
2. Paragraphs 18 through 26 of the stipulation and proposal for settlement, filed March 5, 1981, are hereby incorporated by reference. The City of Abingdon shall comply with the terms of the stipulation and proposal for settlement, and each of them; provided, however, that the City of Abingdon shall comply with Section 12 of the Act and Chapter 3: Water Pollution within five years of the date of this Order, the settlement agreement notwithstanding.
3. Pursuant to Rule 914 of Chapter 3 the Illinois Environmental Protection Agency shall modify NPDES permit No. IL0020761 consistent with this Order and the settlement agreement.
4. The City of Abingdon shall pay a civil penalty of \$4000. The first payment of \$1000 is to be paid within sixty days of the date of this Order and the next three installments of \$1000 each are payable two, four and six months respectively after the date of the first payment. If this City of Abingdon fails to make any payment on time the entire remaining amount shall become immediately due and payable. Respondent shall, by certified check or money order payable to the State of Illinois, pay, subject to the above conditions, a civil penalty of \$4000 which is to be sent to:

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

IT IS SO ORDERED.

Mr. Dumelle concurs. Mrs. Anderson dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 10th day of June, 1981 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board