

ILLINOIS POLLUTION CONTROL BOARD
October 22, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 80-134
)
 COMMONWEALTH EDISON COMPANY, an Illinois)
 Corporation (LaSalle County Station),)
)
 Respondent.)

JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

ROBERT H. WHEELER, ISHAM, LINCOLN & BEALE, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On July 21, 1980, the Illinois Environmental Protection Agency (Agency) filed a Complaint before the Board alleging that Commonwealth Edison Company (Edison) had violated its NPDES permit at Edison's LaSalle County Nuclear Power Station located southwest of Seneca, Illinois. Citizens For a Better Environment (CBE) was granted status as an Intervenor in the proceeding by Order of the Board on October 2, 1980. CBE, however, has not participated in this proceeding in any way. The Agency filed an Amended Complaint, which, pursuant to agreement of the parties, Edison responded to by filing an Affidavit. The Board has received no public comment in this matter.

In its brief, Edison reasserts the objection made at hearing to the filing of an Amended Complaint by the Agency concerning continuing alleged violations during pendency of this matter. Upon review of the record, the Board finds that the Hearing Officer exercised great care in assuring Edison of its rights with regard to the Amended Complaint. In fact, the record shows that Edison agreed with the Agency to the procedures used with regard to the Amended Complaint in the face of the Hearing Officer's suggestion that an additional hearing be scheduled to cure Edison's alleged surprise at the filing of the Amended Complaint. The Board finds no prejudice to either party due to the procedure worked out by the parties and hereby overrules Edison's objection.

The LaSalle County Station is a nuclear generating facility designed to consist of two 1078 mw units. Start-up of the two units is expected sometime after 1981, and at no time during

the period covered by the Complaint was the LaSalle Station operational. The Station was issued a NPDES permit providing for low-volume waste discharge, sanitary treatment plant discharge, and construction runoff discharge into the LaSalle cooling pond and discharge from the cooling pond into the Illinois River.

The Agency alleges that Edison violated permit limitations on discharges from the sanitary waste treatment plant, low volume waste, and construction runoff starting September, 1978 extending through August, 1980. In support of the alleged violations, the Agency put into evidence Edison's discharge monitoring reports and correspondence from Edison to the Agency during that period. The Agency presented no witnesses or other evidence at the hearing. Edison presented one witness and five exhibits which purport to explain why the discharge monitoring reports indicate excursions over the permit limitations for certain constituents which the Agency alleges are violations of Sections 12(a) and 12(f) of the Environmental Protection Act in addition to being violations of the NPDES permit pursuant to Rule 901 of the Board's Rules and Regulations, Chapter 3: Water Pollution.

The real issue in this case revolves around the interpretation of the permit requirements. The Agency points to the plain wording of the permit which says there are limitations on the individual discharges to the cooling pond in addition to the limitations on the discharge of the pond itself to the Illinois River. Edison, on the other hand, argues that since the cooling pond was not being used as such during the period of the alleged violations, the portions of the permit controlling discharges into the pond and contained within the pond were not active, and that they were not therefore obligated to notice any instances of non-compliance.

From a legal standpoint, it appears to the Board that the permit and its conditions are clearly stated and susceptible to very little interpretation. The fact that it is a permit which was supposedly issued after consultation between the Agency and Edison buttresses this conclusion. Page 3 of the permit clearly states that "during the period beginning on the effective date of this permit and lasting until the expiration date the permittee is authorized to discharge from outfall(s) serial number(s) 001(b) sanitary treatment plant waste." "Such discharges shall be limited and monitored by the permittee as specified below:". The other discharges to the cooling pond have similar conditions in the permit. The time for Edison to have resolved problems with interpretation now before the Board was during permit negotiations and through the appeal route subsequent to the issuance of the permit. That time has now passed. From a practical standpoint, it is important that Edison's discharge to the cooling pond be under control as early as possible so that subsequent blowdown of the cooling pond to the Illinois River does not pose a sudden and unexpected environmental problem. The subject permit conditions are specific and reasonable. The Board therefore holds

that Commonwealth Edison was responsible for reporting violations of the permit conditions with respect to discharges into the cooling pond beginning on the effective date of the permit.

The Agency's case herein consists entirely of the monitoring reports and communications between Edison and the Agency during the period covered by the Complaint. Edison presented testimony and exhibits that purport to show that it faithfully followed the NPDES permit conditions as Edison had interpreted them. Edison filed non-compliance reports for discharges into the cooling pond during those times when the cooling pond itself was discharging to the river, i.e., during blowdown operations. It did not, however, file non-compliance reports during those periods when the discharges to the cooling pond were contained within the cooling pond itself, in accordance with its interpretation that the NPDES permit conditions applied only during periods of discharge from the cooling pond into the river.

Although the Board has found against Edison's interpretation of the NPDES permit, Edison's evidence does have weight with respect to mitigation of the violations filed. The Board notes, in passing, that the evidence presented indicates violations of the permit conditions with respect to discharge 001(a), the cooling pond discharge to the Illinois River, during blowdown operations, but since there are no allegations of these violations in the Complaint, the Board will not address them. Since this matter appears to be a matter of legal misinterpretation of the permit conditions, which the Board has now settled, and since there appears to be little or no harm to the environment due to the violations found, the Board will not assess a penalty in this case.

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

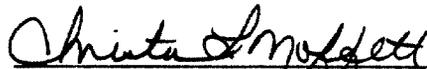
ORDER

1. Commonwealth Edison Company is found in violation of Sections 12(a) and 12(f) of the Illinois Environmental Protection Act and Rule 901 of the Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution, at its LaSalle County Station located in LaSalle County Illinois.

2. Commonwealth Edison Company shall cease and desist from further such violations of the Act and the Board's regulations.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of October, 1981 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board