

ILLINOIS POLLUTION CONTROL BOARD
December 18, 1980

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-214
)
CITY OF PONTIAC, an Illinois)
Municipal Corporation,)
)
Respondent.)

ALICE N. KOHN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

VICARS, CAUGHEY & LEGNER, ATTORNEYS AT LAW (MR. ROBERT R. CAUGHEY, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the August 8, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On February 15, 1980, the Agency filed a Motion for Leave to File Amended Complaint Instanter, the Amended Complaint, and Motion to Direct Hearing Officer to Set Hearing Date. On April 3, 1980, the Board granted the Complainant's motion.

Count I of the Amended Complaint alleged that, during specified months between November, 1977 and December, 1979, the Respondent discharged pollutants from its municipal sewage treatment facility (the "facility" or "plant") into the Vermilion River, a water of the State of Illinois, which violated its NPDES Permit effluent limitations for 5-day biochemical oxygen demand ("BOD₅"), suspended solids, and chlorine residual, and failed to submit the necessary quarterly Industrial Pretreatment Requirements Reports and Industrial User Reports to the Agency in violation of the Respondent's NPDES Permit, Rules 410(a) and 901 of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and Section 12(f) of the Illinois Environmental Protection Act ("Act").

Counts II and III alleged that, on various specified occasions, the City of Pontiac discharged effluent from its sewage treatment plant which contained excessive levels of BOD₅ and suspended solids (i.e., over 10 mg/l of BOD₅ and over 12 mg/l of suspended solids) in violation of Rule 404(c) of Chapter 3 and Section 12(a) of the Act.

A hearing was held on August 22, 1980 at which a proposed, but unsigned, Stipulation was presented. The parties filed their signed Stipulation and Proposal for Settlement on October 29, 1980.* Because the Agency and the City were not able to reach an agreement as to a stipulated penalty, the proposed settlement agreement leaves the amount of the penalty open. However, both parties have filed written briefs with respect to the penalty issue. On October 29, 1980, the Agency filed its brief. The City of Pontiac filed its brief on November 14, 1980. On November 21, 1980, the Agency filed a Reply to the Brief of the Respondent.

In its briefs, the Agency has argued that a \$5,000.00 penalty is appropriate because of: (1) "several instances of inexcusable delays, poor maintenance, and insufficient planning" during a 2-year period; (2) "undue delay" in taking affirmative steps to abate "troublesome wastes" contributed to the City's sewage system by Interlake, Inc. and the Pontiac Correctional Center"; (3) failure to correct "poor plant performance" due to sludge handling problems, equipment breakdowns, personnel problems, and the necessity for extensive repairs.

On the other hand, the City of Pontiac has argued in its brief that it has: (1) exercised "good faith" by attempting to abate pollution caused by discharges to its sewer system; (2) made substantial efforts to solve its sludge handling problems; and (3) tried to take all necessary steps to correct all other environmental problems. Additionally, the City has argued that the \$5,000.00 penalty proposed by the Agency is excessive, punitive, and much higher than the customary penalties levied against other similarly situated municipalities.

In its brief, the Respondent has noted that:

"...the City personnel were not prepared to anticipate some of the problems which arose during the initial years of the plant's operation. These, coupled with the events over which the City had no control (the unexpected death of its first operator, the uncontrollable power surges, and the failure of the microscreens to properly function as initially installed) resulted in the plant discharging an effluent which did not consistently meet NPDES permit limitations.

*Although the proposed settlement agreement was not signed at the time of the August 22, 1980 hearing, the substance of the Stipulation filed on October 29, 1980 was presented. The Board finds that Procedural Rule 331 has been substantially complied with.

In addition, the City's properly certified Class II operator, hired to replace the operator who was killed, failed to file required reports with IEPA, and this fact was not known to other City Officials until the present enforcement action was filed." (Respondent's Brief, p. 1-2).

Additionally, the City's brief indicates that:

"The sludge disposal problem was one which the City initially believed could be handled by use of the existing sludge drying beds as designed. (Stipulation, page 14). When this failed, offsite disposal options were reviewed, ultimately resulting in awarding a \$91,000.00 per year contract for its removal. This, too, required EPA permits and considerable time working out a procedure which is undoubtedly a forerunner to this type of sludge disposal.

While hindsight makes resolution of problems much simpler and more expeditious, the City in each of these problems exercised good faith and reasonable diligence in attempting resolution of the problem with the knowledge it had at the time.

In addition, Complainant faults the City for allowing equipment breakdowns and imperfections in staff performance. (Complainant's Brief, page 6). Neither of these would occur in a utopian situation; however, such is not the case. Pontiac's plant is a complex operation, with experience and training necessary for it to achieve the effluent desired. Pontiac desires its successful operation as much as EPA does, yet is saddled with the realities of the situation. It has in good faith addressed the problems which arose, and sought to preclude the reoccurrence of these problems." (Respondent's Brief, p. 4).

The proposed settlement agreement includes a detailed compliance program and schedule which provides that the Respondent admits the violations alleged in the Amended Complaint and agrees to:

- (1) operate its plant under the direct and active supervision of its present Class II operator or any Class I operator;
- (2) monitor and limit (according to specified parameters) the main treatment plant outfall.
- (3) take specified, Agency-approved steps to limit combined sewer overflows and plant bypass;
- (4) develop a pretreatment program in accordance with an Agency-approved schedule of compliance;
- (5) submit all necessary reports to the Agency;
- (6) monitor and report concentrations of 19 specified parameters (such as arsenic, barium, copper, cyanide, fluoride, iron, lead, mercury, zinc, etc.) to the Agency;
- (7) monitor the operation and efficiency of all treatment and control facilities and take all necessary steps to minimize any adverse impact of non-complying discharges; and
- (8) follow various agreed-upon measures to prevent any further environmental problems. (Stip. 22-38).

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board finds the settlement agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent, the City of Pontiac, has violated Rules 404(c), 410(a) and 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a) and 12(f) of the Act.

In the present case, the Board believes that, while the record indicates that the discharge of excessive levels of contaminants into the Vermilion River from the City's sewage treatment plant was clearly improper, the City acted in good faith, but not expeditiously enough, to correct these problems. Accordingly, the Board hereby assesses a penalty of \$1,000.00 against the Respondent.

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 Respondent, the City of Pontiac, has violated Rules 404(c), 410(a), and 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a) and 12(f) of the Act.

2. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$1,000.00 which is to be sent to:

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

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed October 29, 1980, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 18th day of December, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board