

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1995

IN THE MATTER OF:)
)
PETITION OF THE CITY OF)
LASALLE FOR EXCEPTION TO THE)
COMBINED SEWER OVERFLOW) PCB 86-2
REGULATIONS) (CSO Exception)

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On September 1, 1995, the City of LaSalle (LaSalle) filed a second amended petition for exception to the combined sewer overflow (CSO) regulations at 35 Ill. Adm. Code 306.305(a) and (b). On November 27, 1995, the Board received a response to the petition from the Illinois Environmental Protection Agency (Agency) recommending that the Board deny the request for CSO exception.

The Board first received a request from LaSalle for a permanent exception to the CSO regulations on January 2, 1986, and on January 9, 1986, the Board accepted that petition. A public hearing was held on July 21, 1986. Additional information was provided by LaSalle on August 21, 1986. On April 1, 1987, the Board granted a temporary CSO exception to LaSalle with conditions and retained jurisdiction over the proceeding.

BACKGROUND

The City of LaSalle is located in LaSalle County along both sides of Illinois Route 351 from the north bank of the Illinois River to a point just south of Interstate Route 80. The Illinois River flows from east to west along the south boundary of the community.

The Board has previously discussed in detail the relevant background information in this proceeding. Rather than repeat that information here, the Board hereby incorporates by reference in this opinion the Board's April 1, 1987 and November 3, 1994, opinions and orders (In the Matter of: Petition of the City of LaSalle for Exception to Combined Sewer Overflow Regulations, 77 PCB 21, PCB 86-2; ___ PCB ____, PCB 86-2). The Board directs interested persons to those previous decisions for a more comprehensive review.

CSO REGULATIONS

The CSO regulations are contained in 35 Ill. Adm. Code 306. Section 306.305 provides as follows:

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or

the violations of applicable water standards unless an exception has been granted by the Board pursuant to Subpart D.

Sufficient treatment shall consist of the following:

- a) All dry weather flows, and the first flush of storm flows as determined by the Agency, shall meet the applicable effluent standards; and
- b) Additional flows, as determined by the Agency but not less than ten times to [sic] average dry weather flow for design year, shall receive a minimum of primary treatment and disinfection with adequate retention time; and
- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or
- d) Compliance with a treatment program authorized by the Board in an exception granted pursuant to Subpart D.

Subpart D sets forth the CSO exception procedures. Section 306.350 states that an exception shall be granted by the Board based upon "water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge". Section 306.360 allows the discharger to file a petition for an exception either singly, or jointly with the Agency. In order for a discharger to receive a CSO exception, a certain level of justification for the exception is required to be submitted. This level of justification differs depending on whether the discharger filed a single or joint petition for CSO exception. The level of justification required of a joint petition is set forth in Section 306.362 which provides for a demonstration under Section 306.361(a) (i.e., minimal discharge impact) which is not available to single petitioners. LaSalle as a single petitioner, justifies its claim for a CSO exception based on Section 306.361(b), (c) and (d).

Section 306.361(d), applicable to single petitioners under Section 306.362, provides that a discharger may establish that because special circumstances exist, a detailed water quality evaluation (required pursuant to Sections 306.361(b) and (c)) would be inapplicable for reasons of irrelevancy or the expense of data collection in relation to the relevancy of the data.

The Board's April 1, 1987 opinion indicated that the Agency testified that LaSalle did take all the necessary steps to qualify as joint petitioners with the Agency, including submitting a Phase I study on October 5, 1983 and a Phase II Study on October 23, 1984. (1987 at 2.)¹ However, the Agency chose not to co-petition with LaSalle because of the late date at which LaSalle's petition was received, and because of Agency concerns related to whether water quality and other environmental impacts will be alleviated after the City's proposed improvements are completed. (*Id.*) Further, Mr. Tim Zook of the Agency testified that although a detailed CSO impact study (i.e., Phase III Study) was not conducted, pursuant to Section 306.361 (b) and (c), a study prepared for LaSalle by Serco Laboratories does give substantial information concerning water quality impacts.

The Board in its 1987, opinion also detailed the compliance options and the cost effectiveness of each option. (1987 at 5-7.) The Board in the 1987, opinion held that LaSalle had not justified a permanent CSO exception, but had justified a temporary CSO exception with conditions. Among other conditions, the Board order required an amended petition be filed by March 1, 1990, as well as requiring LaSalle to construct and operate improvements to its wastewater collecting system, and continue monitoring. On March 22, 1990, the Board extended until March 1, 1991, the deadline for the amended petition.

BOARD'S 1994 OPINION

In the amended petition of March 1, 1991, LaSalle stated that improvements have resulted in the elimination of all dry weather overflows. (1994 at 2.) LaSalle pointed out that since the Board granted the temporary CSO exception in 1987, LaSalle has constructed and was operating improvements to its wastewater collection system and treatment plant. (*Id.*) LaSalle also provided information regarding improvements to the wastewater treatment plant which increased the design average flow of the plant from 2.2 MGD to 3.3 MGD. (*Id.*) Further, the design maximum flow was decreased from 12 MGD to 9.1 MGD. (*Id.*)

LaSalle stated that the 11th Street Pump station and the M & H Outfall have been eliminated by installing a diversion structure near the location of the 11th Street Pump Station; routing all existing sewers which were tributary to the Pump Station through this structure, and abandoning the M & H Pipe in place. (November 3, 1994 at 2.) A 60" overflow pipe at the 11th

¹ The April 1, 1987, Board opinion and order will be cited as "1987 at ___"; The November 3, 1994 opinion and order will be cited as 1994 at ___; LaSalle's amended petition of September 1, 1995 will be cited as "Am. Pet. at ___"; the Agency's response of November 27, 1995 will be cited as "Ag. Rec. at ___."

Street overflow was also installed south of the old M & H Overflow pipe. (*Id.*) In 1991, LaSalle also maintained that construction involving the Union Street interceptor, the Canal Street interceptor, the Creve Coeur Street Diversion structure, upgraded the system and decreased overflows. (1994 at 2.)

To further reduce the possibility of overflows, LaSalle had implemented a policy that any major street repair would involve new storm sewers as well as adding a street sweeping program to remove debris before the debris can enter the sewer. (1994 at 2-3.) Finally, LaSalle stated that its population had decreased by approximately 6.3% since the 1980 census and one large industrial user has been lost, while a second industrial user had significantly upgraded its pre-treatment facility and a third is presently subject to a compliance plan to install a pre-treatment facility. (1994 at 3.)

In November 1994, the Board found that LaSalle's March 1, 1991 amended petition lacked sufficient information to grant a permanent CSO exception as there were some areas where dry-weather overflows may be occurring. (1994 at 4.) The Board stated:

The Board is particularly concerned in that LaSalle was offered an opportunity to update the information before the Board in June of this year. LaSalle choose not to file any further information with the Board. The Board finds that LaSalle has failed to provide necessary data to allow the Board to determine what impact the requested exception will have on the environment. Therefore, the Board will not grant a permanent CSO exception at this time. Instead, the Board will accept the Agency's recommendation and extend the temporary exception with certain conditions.

(1994 at 4.)

The Board's 1994 order set forth eight conditions which included a requirement that LaSalle shall eliminate all dry-weather overflows as well as providing any raw data LaSalle has with respect to monitoring Outfalls 003, 004, 006, 006A and 007. (1994 at 6.) Further, the Board's order required LaSalle to repair Outfall 006, prior to performing stream inspections, so the flow can properly enter the Little Vermilion River. (*Id.*) The Board also directed LaSalle, in consultation with the Agency, to: design and construct improvements at CSOs outfalls 006 and 004 (5th Street and Marquette Street) to permanently eliminate the dry weather overflows at these locations by March 1, 1995; complete a Phase II report as outlined in 35 Ill. Adm. Code 375.203 and submit it to the Agency by May 15, 1995; and complete and submit to the Agency a Plan of Study (POS) for a Phase III Evaluation at each CSO location by December 1, 1994. (*Id.*)

In a cautionary note the Board also stated:

The Board notes that LaSalle has been operating with a temporary CSO exception since 1987. The temporary CSO exception was granted to allow LaSalle the time necessary to make changes in the LaSalle waste water collection and treatment system so that a permanent CSO exception could be granted. As is indicated by this opinion, LaSalle has not fulfilled all the necessary requirements for a permanent CSO exception despite several years of effort. The Board will not be inclined to extend this temporary exception beyond 1995, unless LaSalle can show good cause for doing so.

(1994 at 4.)

SECOND AMENDED PETITION

In general, the second amended petition states that LaSalle has continued the policy of street sweeping and upgrading storm sewers. (Am. Pet. at 6-7.) LaSalle reiterates that certain industrial users have ceased operations while other industrial users have upgraded pretreatment facilities. (Am. Pet. at 6.) Further, LaSalle states that it has received recent approval from USEPA of "upgraded standards regarding its wastewater treatment plant". (*Id.*)

Specifically, LaSalle submitted information regarding each of the conditions from the Board's 1994 order. Regarding Condition 1, which required that LaSalle eliminate all dry-weather overflows, LaSalle maintains that it has eliminated all dry-weather overflows. (Am. Pet. at 10.) LaSalle states that it has removed the Marquette Street overflow (004) from the combined sewer system and sealed the Fifth Street overflow. (*Id.*) LaSalle maintains that "any flow currently existing with an outlet pipe presently, does not originate from any portion of any remaining combine system". (*Id.*) LaSalle admits that a "slight flow" was noticed during dry weather at the Creve Coeur Street overflow (003); however, according to LaSalle an investigation determined that the flow did not originate from the combined system. (*Id.*) Rather, LaSalle speculates that the flow originates from LaSalle's water distribution system. (*Id.*)

Conditions 2 and 3 granted LaSalle a temporary CSO exception until December 1, 1995 from 35 Ill. Adm. Code 306.305(a) regarding the first flush of storm flows and from 35 Ill. Adm. Code 306.305(b) and required LaSalle to submit an amended petition on or before September 1, 1995. LaSalle timely filed this amended petition.

Condition 4 required LaSalle to provide any raw data it has with respect to monitoring Outfalls 003, 004, 006, 006A and 007. LaSalle submitted summaries of the data as Exhibits A and B to

the amended petition filed on September 1, 1995. (Am. Pet. at 11.) Condition 5 required LaSalle to repair Outfall 006, prior to performing stream inspections, so the flow can properly enter the Little Vermilion River. LaSalle states that overflow 006 was eliminated on November 15, 1994. (Am. Pet. at 11.)

Condition 6 set forth several requirements for LaSalle including a requirement to design and construct improvements at outfalls 006 and 004 (5th Street and Marquette Street) to permanently eliminate the dry weather overflows at these locations by March 1, 1995. As stated above, LaSalle maintains that it has eliminated all dry-weather overflows. (Am. Pet. at 11.)

Condition 6(b) required LaSalle to complete a Phase II report as outlined in 35 Ill. Adm. Code 375.203 and submit to the Agency by May 15, 1995. LaSalle indicates that it completed inspection for low flow events in September of 1994; however, stream and environmental conditions have not resulted in an event for any overflow to take place at outfall 007. (Am. Pet. at 11.) Therefore, LaSalle asserts it was unable to fully comply with condition 6(b). (*Id.*)

Condition 6(c) required LaSalle to complete and submit to the Agency a Plan of Study (POS) for a Phase III Evaluation at each CSO location by December 1, 1994. LaSalle states that a Phase III stream study was submitted to the Agency by December 1, 1994. (Am. Pet. at 11.) Work associated with the study is being completed according to LaSalle and data in existence to the date of the filing of the amended petition was included in Exhibit B to the petition. (*Id.*)

Condition 6(d) prohibited expansion of the service area tributary to the combined sewers and condition 6(e) required LaSalle to continue its monitoring of the combined sewer overflows on a weekly basis and after every major rainfall. LaSalle states that no extensions of service have been allowed and monitoring has been continued. (Am. Pet. at 12.) LaSalle has submitted copies of all monitoring reports to the Agency and included a summary of the reports in Exhibit A. (*Id.*)

The remaining conditions in the Board's order deal with procedural considerations and LaSalle simply acknowledges those conditions in the second amended petition. (Am. Pet. at 12.) LaSalle also states that it remains willing to "continue to be alert to any additional issues that may arise". (Am. Pet. at 12.) As an example of LaSalle's diligence, LaSalle reportedly "spent considerable time investigating potential solutions" to a recent increase in the frequency and amount of backups. (*Id.*) LaSalle further indicates that it has recently appointed a full-time city engineer with "considerable experience in environmental matters". (*Id.*)

AGENCY RESPONSE

The Agency states that it "cannot recommend" that the temporary exception to the combined sewer overflow regulations be extended nor can the Agency recommend that LaSalle be granted a permanent CSO exception. (Ag. Rec. at 1.) The Agency acknowledges that LaSalle "has made significant improvements in its overall CSO" system. (Ag. Rec. at 7.) However, the Agency is concerned that discharges from certain CSO outfalls still apparently cause sludge deposits in the Illinois and Michigan Canal (I & M Canal). (*Id.*)

The Agency states that it is particularly concerned about the conditions at CSO outfall 003 which discharges into the I & M Canal. (Ag. Rec. at 3-4.) By LaSalle's own admission dry-weather flow is occurring at this outfall apparently from the potable water distribution system. (Ag. Rec. at 4.) The Agency is concerned that this is a potential cross-connection which is prohibited by regulation. (*Id.*) In addition, the Agency points to the observations made by LaSalle's personnel when carrying out a low stream flow inspection in 1994. According to the inspection:

A general overall inspection of the outfall area indicated the presence of rags, paper and feminine hygiene products. A smell similar to that found in a bar screen building was present. The water in these pockets was a milky green color. There were also isolated areas of turbid green water with debris. Probing of the bottom sediment, which appeared to be a sandy soil, indicated the presence of fresh and partially deteriorated organic material. This sediment was black, gritty and had a septic odor. Approximately twenty percent of the bed appeared to contain these deposits which were 1/4 inch in depth in an area of stream about 300 feet long.

(Exhibit A, par. 6.1-1; Ag. Rec. at 4-5.)

In addition to the Agency's concerns involving outfall 003, the Agency is also concerned about the conditions around outfall 006A and 007. (Ag. Rec. at 5.) In the area of 006A, according to LaSalle's inspections, the area is being used as an illegal dump. (Exhibit A, par 6.2-1; Ag. Rec. at 5.) The Agency believes that additional Phase II stream inspection should be made in this area to insure that the debris is not masking impacts from the CSO. (Ag. Rec. at 5.) Outfall 007 also has evidence of dry-weather flows, apparently due to groundwater infiltration from an old industrial site. (Ag. Rec. at 6.) The Agency is concerned that the outfall pipe may be serving as a conduit for transporting potentially hazardous materials directly to the Little Vermilion River. (*Id.*)

DISCUSSION

As previously stated a CSO exception shall be granted by the Board based upon "water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge". (Section 306.350.) LaSalle, by its own admission, still has dry-weather flow at outfall (003). Further, LaSalle's inspection narrative of the area around outfall 003 does not alleviate the Board's concern. The Board believes the record indicates that the discharge from outfall 003 into the receiving stream could cause water quality degradation.

In addition, the Agency has pointed to at least two other outfalls where problems still remain. Specifically, the record indicates that there are dry-weather flows at outfall 007. Again, the flow may not be a result of combined sewer, but, the discharge from that outfall is a possible conduit for contamination to the Little Vermilion River. Thus, this discharge may also be negatively impacting the water quality of the receiving stream.

The Board finds that the record before it establishes several potential water quality problems as a result of discharges from the LaSalle combined sewer system. Therefore, the Board agrees with the Agency that LaSalle has not justified permanent CSO exception to the combined sewer overflow regulation (CSO) at 35 Ill. Adm. Code 306.305(a) and (b). The Board denies the City of LaSalle's request for exception from the combined sewer overflow regulations and this docket is closed.

This opinion constitutes the Board findings of facts and conclusion of law.

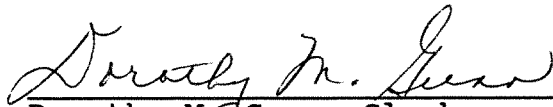
ORDER

The Board denies the City of LaSalle's request for permanent exception to the combined sewer overflow regulations at 35 Ill. Adm. Code 306.305(a) and (b). This docket is hereby closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of December, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board