

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF ROCK ISLAND,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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PCB 00-73 STATE OF ILLINOIS
(Permit Appeal - NPDES) Pollution Control Board

NOTICE

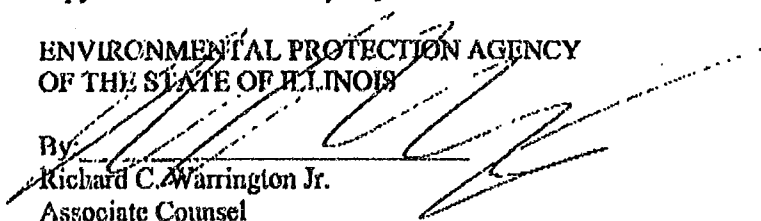
Dorothy Gunn, Clerk
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100 West Randolph Street
Chicago, IL 60601

Roy M. Harsch
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John Knittle, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
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Please take notice that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **POST HEARING BRIEF** of the Illinois Environmental Protection Agency, a copy of which is served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
Richard C. Warrington Jr.
Associate Counsel
Division of Legal Counsel

Date: June 7, 2000

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF ROCK ISLAND,)	
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Petitioner,)	
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v.)	PCB 00-73
)	(Permit Appeal -NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

POST HEARING BRIEF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Respondent, the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, Richard C. Warrington Jr., hereby files its Post Hearing Brief.

I. INTRODUCTION

1. This National Pollutant Discharge Elimination System ("NPDES") permit appeal concerns the operation of the main sewage treatment plant ("Plant") of the City of Rock Island ("City" or "Petitioner"). The City operates the Plant under NPDES permit No. IL 00307893.

II. CHLORINE RESIDUAL

2. The Illinois EPA joins in the request to reevaluate the chlorine residual applicable to this permit, with a limit of 1.0 milligrams per Liter ("mg/L") until such testing of

actual performance of the system to control fecal coliform limits justifies an alternate chlorine residual limit. (Tr. 00-73 p. 8)¹

III. PLANT CAPACITY

3. The Illinois EPA and the City have agreed to incorporate the record of the Variance case, PCB 98-164 into this permit appeal record. (Tr. 00-73 p. 7) However, although the facts may be mutual between the two proceedings, the standard of review for the Illinois Pollution Control Board ("Illinois PCB") is distinct in each. In a permit appeal, the standard is whether the application demonstrates that the facility will not cause a violation of the Illinois Environmental Protection Act ("Act") or the regulations thereunder. 415 ILCS 5/39 (1998) The Illinois EPA is required to specify those terms and conditions which may be required to accomplish the purposes and provisions of this Act. 415 ILCS 5/39(b)

4. In the case of this NPDES permit, the plant capacity has been specified as 16 million gallons per day ("MGD") for the design maximum flow ("DMF") ever since the Mayor of the City and their engineer applied for the permit in 1970. (Record p. 353, line C-34) The DMF was again specified as 16 MGD in the Combined Sewer Overflow Exception proceeding, PCB 85-214, May 9, 1986. (Record p. 284) In particular, the City represented to the Illinois PCB that certain specified improvements would allow "operation of the treatment plant at the design maximum level of 16 MGD and improvements to the North Slope Interceptor to assure that maximum available transport capacity will be utilized prior to overflow events." (Record p. 287) A Municipal

¹ References to the CSO Exception Order of May 9, 1986 are to Exception p. x; to the Amended Petition are to Amended Petition, p. x; to the Amended Recommendation are to Amended Recommendation p. x; to the transcript of the variance hearing are to Tr. 98-164 p. x; to the transcript of the permit appeal hearing are to Tr. 00-73 p. x; and to the permit appeal record are to Record p. xx.)

Compliance Plan ("MCP") was subsequently approved by the Illinois EPA on July 1, 1986 specifying this upgrade. (Record p. 279) The DMF of 16 MGD was again specified in the NPDES permit modified on July 17, 1998. (Record p. 159) Although the City could have sought relief, the City Council concluded that it had made a commitment to providing an 8/16 MGD plant. (Tr. 98-164 p. 38)

5. The City attempts to argue that a clarification between the terms "maximum practicable flow" and DMF, as requested by the United States Environmental Protection Agency ("USEPA") to implement the Illinois PCB's Order in PCB 85-214, May 9, 1986 is an error. Pursuant to the NPDES program, draft permits are reviewed by USEPA before issued by the Illinois EPA. In this case, USEPA recognized that the use of "maximum practicable flow" was not defined in the draft permit. (Record p. 90) The term is not defined by the Illinois PCB, although it is used in 36 Ill. Adm. Code 306.303 in the context of sewer efficiency. The City argues that the maximum practicable flow, if the term is applied to the treatment plant and not to the sewers is less than 16 MGD.

Testimony by Mr. McSwiggin, called as an adverse witness by the City, indicated that there was a reasonable possibility that the treatment plant improvements constructed in the early 1970's would have been capable of meeting secondary treatment limits at a DMF of 16 MGD. (Tr. 98-164 p. 68) Mr. McSwiggin also proposed a definition for maximum practicable flow as applied to treatment works. (Tr. 98-164 p. 75)

6. It should also be noted that the regulations of the Illinois PCB require conditions as least as stringent as applicable federal regulations in 35 Ill. Adm. Code 309.146(c). The USEPA has promulgated 40 CFR 122.41(c) that provides:

Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

The Illinois EPA includes this provision as standard condition 3 in every NPDES permit.

(Record p. 18)

IV. OUTFALL 007

7. The dispute over whether outfall 007 should be characterized as a sanitary sewer or a combined sewer requires an analysis of the only two alternatives available under the regulations of the Illinois PCB. Under the definition of a combined sewer, a sewer is combined if it was designed and constructed to receive both wastewater and land runoff. (See 35 Ill. Adm. Code 301.255) A sewer is sanitary if it carries wastewater together with incidental land runoff. (See 35 Ill. Adm. Code 301.375) The problem in the application of these definitions is that some of the sewers tributary to outfall 007 were originally designed and constructed as combined sewers, but then reconstructed to separate out street drains into a new storm sewer system. The remaining sewer, although now lacking the land runoff from the street drains, admits stormwater from a variety of private sources. The amount of this stormwater flow is more than incidental. (Tr. 00-73 p. 17) Consequently, the sewer tributary to outfall 007 has performance characteristics not satisfying either regulatory definition. It was reconstructed from being a combined sewer yet still carries an excessive amount of stormwater.

8. This sewer was first addressed by the Illinois PCB in PCB 80-212. (Record p. 338) Although the Illinois PCB did not find that it was a sanitary sewer (Tr. 00-73 p. 12), it did describe the manholes upstream of the lift station as surcharging ordinary domestic sewage during wet weather periods. (Record p. 338) The Illinois PCB did not describe it as a combined sewer and the City and the Illinois EPA addressed it as a sanitary sewer in development of the

City's municipal compliance plan ("MCP"). (Tr. 00-73 p. 12) The City did not seek an exception for this discharge under 35 Ill. Adm. Code 306.Subpart D as it did for the CSO discharge at the main treatment plant.

8. The municipal compliance plan was approved as a project to correct infiltration/inflow to eliminate all sanitary sewer overflows. (Record p. 279, 277) Obviously, the MCP was not successful in removing all sanitary sewer overflows and the Illinois EPA has attempted to engineer a solution using the combined sewer overflow concepts of first flush and capture of 10 times the dry weather flow. (Tr. 00-73 p. 21) Nonetheless, the applicable NPDES permit listed outfall 007 as a prohibited sanitary sewer discharge. (Tr. 00-73 p. 16) The Illinois EPA believes, with the City, that after the completion of certain improvements that the discharge from outfall 007 will not continue. (Tr. 00-73 p. 19)

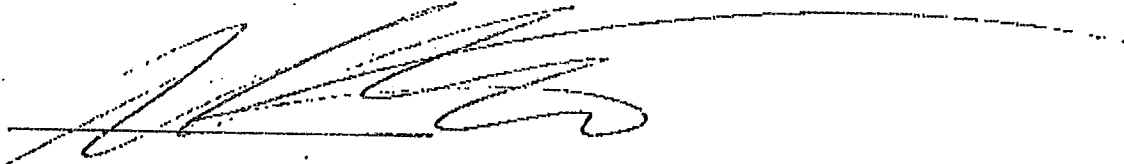
V. CONCLUSION

9. Of the three appeal points raised by the City, the chlorine limitation can be resolved by provision of an interim limit until additional information can be generated and provided to the Illinois EPA. The question of the proper DMF for the main treatment plant is resolved by consideration of the evidence that the City asked for that capacity rating in the original permit application, confirmed 16 MGD as the resulting DMF in the CSO Exception proceeding PCB 85-214, and affirmed it rather than rerating the plant or seeking earlier relief. Consequently the DMF of the plant and the threshold that must be met before bypassing of untreated sewage must remain at 16 MGD. The characterization of the discharge from outfall 007 should remain as a sanitary sewer overflow based on the long understanding of its nature before the Illinois PCB by the City and the Illinois EPA that it is a sanitary sewer, with an unsatisfactory attempt to correct

its genesis as a combined sewer. The Illinois EPA believes that recognition as a leaking sanitary sewer will be only temporary until the discharge is eliminated completely.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Richard C. Warrington Jr.
Associate Counsel

Dated: June 7, 2000

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6/7/00

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **POST HEARING BRIEF** upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St. Suite 11-500
Chicago, Illinois 60601
(By Facsimile as Ordered by the Hearing Officer on June 6, 2000)

Roy M. Harsch
Sheila H. Deely
Gardner, Carton & Douglas
Suite 3400 Quaker Tower
321 North Clark Street
Chicago, Illinois 60610-4795
(By Facsimile as Ordered by the Hearing Officer on June 6, 2000)

John Knittle, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
(By Facsimile as Ordered by the Hearing Officer on June 6, 2000)

and telefaxing it from Springfield, Illinois on June 7, 2000 before the hour of 5:00 p. m..

Nancy J. D. Lampert

SUBSCRIBED AND SWORN TO BEFORE ME

this 7th day of June, 2000

[Signature]
Notary Public

G:\warrington\Rock Island
6/6/00

