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JUN 16 2000

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB 00-073  
(NPDES Permit Appeal)

NOTICE OF FILING

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PLEASE TAKE NOTICE that on Friday, June 16, 2000, we filed the attached Post Hearing Reply Brief of City of Rock Island with the Clerk of the Pollution Control Board, a copy of which is herewith served upon you.

Respectfully Submitted,

CITY OF ROCK ISLAND.

  
One of Its Attorneys

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STATE OF ILLINOIS  
*Pollution Control Board*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OF  
THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
CITY OF ROCK ISLAND,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 00- 073
	)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**POST HEARING REPLY BRIEF OF CITY OF ROCK ISLAND**

Petitioner City of Rock Island ("Rock Island"), by its attorneys Gardner, Carton & Douglas, hereby files its Post Hearing Reply Brief.

**I. PLANT CAPACITY**

Regardless of the designation of the Rock Island treatment plant as having a design maximum flow of 16 million gallons per day ("MGD"), this does not require Rock Island to treat 16 MGD prior to use of the CSO bypass. IEPA has admitted that the plant was never designed to treat a maximum flow of 16 MGD and meet the permit limits that it is subject to today. (Tr. 3/22/00, PCB 98-164, pp. 66-67). It was the Illinois Sanitary Water Board practice in the early 1970s to design and permit treatment plants based on the design average flow. (Tr. 3/22/00, PCB 98-164, pp. 67-68).

The State attempts to make much of the fact that Rock Island's permit application indicated that the design maximum flow rate was 16 MGD. However, Mr. McSwiggin testified that it was the common practice to use a peaking factor of 100 percent. (Tr. 3/22/00, PCB 98-

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164, p. 71). Mr. McSwiggin further testified that that designation “has nothing to do with Rock Island’s treatment plant being physically capable of treating 16 million gallons per day and complying with the current applicable effluent limitations.” (Tr. 3/22/00, PCB 98-164, p. 72). Rock Island was simply following accepted practice in completing its application.

The State seems to argue that Mr. McSwiggin’s proposed definition of the term “maximum practicable flow” supports the argument that the designated design maximum flow of 16 MGD must be the maximum practicable flow, as U.S. EPA suggested. This is not at all what Mr. McSwiggin stated. Mr. McSwiggin’s definition of the “maximum practicable flow” is the “maximum flow that a plant can sustain without using<sup>1</sup> the solids and still maintaining compliance with the conditions of the permits.” (Tr. 3/22/00, PCB 98-164, p. 75). Mr. McSwiggin also testified that “it is impossible to state with certainty that<sup>2</sup> the maximum flow rate is and can be treated at a given sewage treatment plant because of the variation in individual characteristics”, which include the “design of treatment plant units, raw waste water, treatment plant microorganisms, operation and maintenance schedules, and other physical parameters such as temperature, pH, et cetera” (Tr. 3/22/00, PCB 98-164, p. 69). According to Mr. McSwiggin, the main purpose behind IEPA’s long-standing policy of requiring treatment of maximum practicable flow prior to use of the CSO bypass, rather than simply requiring treatment of the plant’s stated design maximum flow, is to avoid solids washout. (Tr. 3/22/00, PCB 98-164, pp. 74-75). Washout of solids has the potential to cause a substantially greater environmental impact than allowing a CSO bypass, once the maximum practicable flow is treated.

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<sup>1</sup> This may be a transcription error. It appears from the context, that Mr. McSwiggin said “losing” the solids.

<sup>2</sup> Again, there appears to be a transcription error. It appears from the context that Mr. McSwiggin said “what” and not “that” here.

It is readily apparent why IEPA did not simply state that the design maximum flow must be treated prior to using a CSO bypass. First, if IEPA intended "maximum practicable flow" to be the same as design maximum flow, it would have been easier for IEPA, and certainly for Mr. McSwiggin, to just say that. Second, based on Mr. McSwiggin's testimony, because it is so difficult to determine what the actual maximum flow rate that can be treated (and avoid solids washout and meet permit limits) by any particular plant because of all of the variables discussed by Mr. McSwiggin, saying that the design maximum flow must be treated prior to CSO bypass would potentially cause a substantially greater environmental impact than allowing CSO bypass once the maximum practicable flow (whatever that is) is treated.

It is unclear why the State raises the issue of standard condition 3 in paragraph 6 of its Brief. What Rock Island is arguing is that IEPA has determined that prior to allowing a CSO bypass, a treatment plant must treat the maximum practicable flow, which is not the same as the design maximum flow of the plant. Nowhere in the federal or state regulations is there a requirement that the design maximum flow of the treatment plant must be treated prior to use of a CSO bypass. This has never been a legal requirement. If that were the requirement, then IEPA would have to apply that, as it would be a more stringent requirement. In this case, U.S. EPA has sought to simply and arbitrarily insert the design maximum flow of 16 MGD in place of "maximum practicable flow," when that clearly is not IEPA's intent in its administration of the NPDES program in Illinois, nor is it required by federal regulations.

If the State has raised this because it believes that Rock Island should not be allowed to use its CSO bypass at all if it cannot treat 16 MGD prior to use of the bypass, that would go against the long-standing policy of avoiding solids washout. In addition, this would impose a serious hardship, not only on Rock Island, but all of the citizens of Rock Island because they

would have no treatment plant. To the extent that the State is arguing that the 16 MGD provision must be included in the permit to ensure that a more stringent federal provision is placed in the permit, there is no requirement that treatment to the design maximum flow rate occur prior to use of a CSO bypass.

## II. OUTFALL 007

### 2. Outfall 007

The State, again, agrees that difference between a Combined Sewer and a Sanitary Sewer is provided in the Board's regulations. At the hearing, and in its Brief, the State agrees that a Combined Sewer is a sewer designed and constructed to receive both wastewater and land runoff. (Tr. 3/22/00, PCB 00-073, p. 17); *see also* 35 Il. Adm. Code § 301.255. The State also agrees that a Sanitary Sewer is a sewer that carries wastewater together with *incidental* land runoff. (Tr. 3/22/00, PCB 00-073, p. 17); *see also* 35 Il. Adm. Code § 301.375 (emphasis added). The State agrees that the sewers tributary to 007 were originally designed and constructed as combined sewers and that they convey more than incidental runoff. (Tr. 3/22/00, PCB 00-073, p. 10, 17). The State claims that sewers tributary to outfall 007 have "performance" characteristics not satisfying either regulatory definition. However, because they were designed and constructed to receive both wastewater and land runoff (the definition of a combined sewer), and they convey more than incidental runoff (sanitary sewers may convey only incidental runoff), it is clear that they do not fit the definition of Sanitary Sewer. What "performance" characteristics the State is talking about do not appear in the record.

In its Municipal Compliance Plan, Rock Island committed to and completed a project to remove catch basins and street drains from the area to eliminate domestic surcharges and

overflows. (Tr. 3/22/00, PCB 00-073, p. 11). However, Rock Island never committed to totally separate the system, and after the partial separation, Outfall 007 still conveyed a significant amount of storm water. (Tr. 3/22/00, PCB 00-073, p. 11). Rock Island neither committed nor was required to disconnect residential footing drains, sump pumps or roof drains from these sewers. (Tr. 3/22/00 PCB 00-073, p. 11).

The State is correct that Rock Island petitioned the Board for an exception from regulations applicable to sewer overflows for Outfall 007 and 010 in PCB 80-212.<sup>3</sup> (Tr. 3/22/00, PCB 00-073, p. 10). In that proceeding, the Board required Rock Island to eliminate the overflows from Outfall 007. (Tr. 3/22/00, PCB 00-073, p. 10). The State admits in its brief that in that proceeding, neither Rock Island nor the Board referred to Outfall 007 as a *sanitary* sewer. (Tr. 3/22/00, PCB 00-073, p. 11). Although Rock Island disagreed with IEPA that Outfall 007 was a sanitary sewer, and the Board did not designate it as such in the proceeding, this partially separated sewer system was referred to as a sanitary sewer solely by IEPA. (Tr. 3/22/00, PCB 00-073, p. 12). Subsequent to entry of the Board's order in PCB 80-212, Rock Island agreed to carry out the Municipal Compliance Plan to address alleged violations relating to Outfall 007, despite the fact that it did not agree that it was a sanitary sewer. (Tr. 3/22/00, PCB 00-073, p. 11). That IEPA agreed that the sewer system would not undergo complete separation is undisputed. (Tr. 3/22/00, PCB 00-073, pp. 13-18).

IEPA has never enforced against Rock Island for overflows from Outfall 007. It has never sought to prohibit them. In fact, Rock Island and IEPA had discussed, at a meeting on June 10, 1999, the fact that IEPA would be willing to change the permit to correct the error in designation of Outfall 007 if Rock Island could provide information showing it had been

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<sup>3</sup> Outfall 010 has been physically sealed and is removed from the NPDES Permit.

designed and constructed as a combined sewer. (Permit Record at p. 000042). After that meeting, Rock Island provided IEPA with information regarding Outfall 007's design and construction (Permit Record at pp. 000020-41), but then IEPA did not make the change when it issued the final permit, which is the subject of this appeal. (Permit Record at p. 000001). The only reasons they cited for not doing so were that it had always been referred to as a sanitary sewer overflow, and that there was an issue regarding dispersion of grant money. (Permit Record at p. 000001). IEPA presented no evidence at hearing, and there is no evidence in the record, that supports the grant money issue, and the State has not argued it in its Brief.

In addition, the State is well-aware that there would be overflows from Outfall 007, and that is why they agreed to and permitted Rock Island's construction of the Fransiscan and Saulkie Basins to capture 5-year storm events. (Tr. 3/22/00, PCB 00-073, pp. 13-16).

The State also admits that it used combined sewer overflow requirements to address the overflow issue at Outfall 007. (Resp. Br. at ¶8). The State also agrees that after completion of the improvements described by Rock Island in its initial brief, there will be no additional overflows from Outfall 007. (Id.; see also Tr. 3/22/00, 00-073, pp. 13-16). Thus, there is no basis for continuing to refer to Outfall 007 as a sanitary sewer overflow, and this should be corrected in the permit.

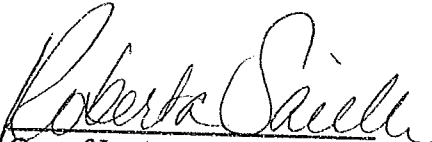
### **CONCLUSION**

The permit condition requiring treatment of 16 MGD prior to use of the CSO bypass should be eliminated because it is not required by either State or federal law. Outfall 007 should be redesignated as a CSO because it meets the regulatory definition of a CSO, and because the State has treated it as a CSO in working with Rock Island to eliminate overflows. For the

reasons stated herein and in its initial Brief, Rock Island requests that the Board enter an order as requested in its initial brief.

Respectfully Submitted,

**CITY OF ROCK ISLAND,**

  
One of Its Attorneys

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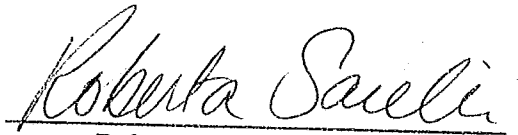
**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that she caused to be served a copy of the Post Hearing Reply Brief of the City of Rock Island on the following:

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by U.S. Mail delivery on this 16<sup>th</sup> day of June, 2000.



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