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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.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 00- 073
(NPDES Permit Appeal)

POST HEARING BRIEF OF CITY OF ROCK ISLAND

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

I. INTRODUCTION

On March 24, 1998, Rock Island applied to the Illinois Environmental Protection Agency ("IEPA") for reissuance of its existing NPDES permit to discharge from its Main Sewage Treatment Plant ("Plant") to the Mississippi River, Sylvan Slough and Blackhawk Creek. After IEPA prepared a proposed NPDES permit, Rock Island submitted written comments and objections. IEPA responded by issuing a final permit on September 14, 1999 with revisions to address the concerns of Rock Island (the "Permit"). (See Pet. Exh. 12, Exh. A). However, IEPA declined to make certain changes requested by Rock Island, and made other changes in response to comments by the United States Environmental Protection Agency ("U.S. EPA"). Rock Is.and filed an appeal of the Permit, and a hearing was held on March 22, 2000 in Rock Island, Illinois,

at which Rock Island presented evidence in the form of testimony and entered into certain stipulations with the State of Illinois regarding certain facts.

Rock Island also filed a Petition for a Variance, which addresses certain issues that are pertinent to the appeal of the Permit. A hearing was held on March 22, 2000, in conjunction with the hearing on this Permit Appeal. The testimony and exhibits in the Variance proceedings were incorporated by reference into the record of this case pursuant to agreement of the parties. (Tr. 3/22/00, PCB 00-073, p. 7).¹

Rock Island appealed two uncorrected legal/factual errors in the Permit, and also appealed the new chlorine residual limitation for two new outfalls. By stipulation, the parties agreed to remand the issue of the chlorine residual limitation for basin discharges 011 and 012 to the Illinois Environmental Protection Agency ("IEPA"). (Tr. 3/22/00, PCB 00-073, p. 8). Pursuant to the stipulation, IEPA is to include a chlorine residual limitation of 1.0 mg/L, subject to the IEPA's ability to lower that number if it is determined, after use, that Rock Island can meet the fecal coliform limitation in the Permit and still maintain the lower chlorine residual. (Tr. 3/22/00, PCB 00-073, p. 8). Rock Island requests that the Illinois Pollution Control Board ("Board") order that this issue be remanded to IEPA in accordance with the stipulation.

The two factual/legal errors that were not corrected by IEPA in the Permit pertain to the designation of the Plant as a 16 million gallon per day ("MGD") plant, and the designation of Outfall 007 as a sanitary sewer outfall. IEPA stipulated that because of differences in language between the Permit and letters from U.S. EPA and IEPA to the City that discuss it, there is a possibility of confusion as to whether the designation of the Plant as a 16 MGD plant for

¹ Because the hearings for both PCB 00-073 and PCB 98-164 were held on the same date, the transcript for PCB 00-073 shall be referred to herein as "Tr. 3/22/00, PCB 00-073, p. ___" and the transcript for PCB 98-164 shall be referred to herein as "Tr. 3/22/00, PCB 98-164, p. ___".

purposes of requiring that treatment capacity to be met before use of the combined sewer overflow ("CSO") bypass through Outfall 001A would be allowed. (Tr. 3/22/00, PCB 00-073, pp. 22-23). IEPA stipulated that one reading of the requirement would be that the City must physically treat 16 million gallons of wastewater on any day that it has a bypass. (Tr. 3/22/00, PCB 00-073, pp. 22-23). IEPA stipulated that the language in the Permit also could be read to require that the City provide a treatment of a flow rate of 16 MGD before it would be allowed to use the bypass. (Tr. 3/22/00, PCB 00-073, p. 24). Rock Island maintains that the draft NPDES permit, prior to revision in response to U.S. EPA comments, recognized that issue because it required the City to treat the maximum flow practicable prior to using the CSO bypass rather than referring to the 16 MGD designation. Rock Island requests that the Board remand this issue to IEPA to revise the Permit in accordance with the stipulations at the hearing.

As Rock Island demonstrated through the testimony and exhibits at hearing, these errors must be corrected to reflect the true situation.

II. ARGUMENT

1. The Plant Capacity Issue

The Plant was designed in the late 1960s pursuant to then-existing design criteria of the Illinois Sanitary Water Board, which required only that the Plant meet narrative requirements for secondary treatment and that design of secondary clarifiers be based on design average flow rate. (Tr. 3/22/00, PCB 98-164, pp. 67-68). The Plant, at that time, could meet those requirements as designed with an 8 MGD design average flow rate. Based on state policy of multiplying the design average flow rate by 2 or 2.5, the Plant was rated at that time as a 16 MGD design maximum flow rate plant. (Tr. 3/22/00, PCB 98-164, p. 71). At that time, because there were no numeric limitations in state regulations for biochemical oxygen demand ("BOD") or total

suspended solids ("TSS"), even if biosolids would wash out of the Plant at a flow of 16 MGD, the Plant could meet its permitted limitations. (Tr. 3/22/00, PCB 98-164, p. 68).

Subsequent to the design of the Plant, numerical limitations for BOD and TSS were promulgated by the Board and limits of 20 mg/L BOD and 25 mg/L TSS were placed in the Plant's original operational permit. Because treatment for BOD and TSS relies upon the presence of biosolids in the treatment plant, the Plant was no longer capable of taking 16 MGD through the Plant, while still meeting its permit limitations for BOD and TSS, due to washout of the biosolids necessary for such treatment. Using current IEPA design criteria, the Plant as it is currently constructed has a design maximum flow of 12 MGD, due to the size of the secondary clarifiers. (Tr. 3/22/00, PCB 98-164, p. 25). The testimony of James Huff and Robert Hawes demonstrated that it is presently physically impossible to send flows through the plant in excess of 12 MGD and consistently comply with the NPDES permit limits. (Tr. 3/22/00, PCB 00-073, p. 32; Tr. 3/22/00, PCB 98-164, p. 21). The historical designation of the Plant erroneously identified it as a 16 MGD plant, as does the current NPDES permit issued by IEPA. (Petitioner's Exhibit 12, Exh. A). Rock Island has been granted a construction permit to increase the plant's maximum design flow to 16 MGD and is expeditiously proceeding with construction of the improvements necessary to increase the design maximum flow rate to 16 MGD. (Tr. 3/22/00, PCB 98-164, p. 15).

Previous NPDES permits issued to Rock Island, including drafts of the most recent Permit, did not prohibit the use of Outfall 001A for CSOs at flows under 16 MGD. Instead, those permits required Rock Island to treat "maximum practical flow." (Tr. 3/22/00, PCB 98-164, p. 74). According to the testimony of Thomas McSwiggin, manager of the Permit Section of the Division of Water Pollution Control of IEPA, requiring treatment plants to treat the

maximum practical flow prior to use of a CSO bypass is consistent with standard IEPA practice and policy. (Tr. 3/22/00, PCB 98-164, p. 74) Mr. McSwiggin testified that it is not possible to state with any certainty what the maximum flow rate is that can be treated at a given sewage treatment plant. (Tr. 3/22/00, PCB 98-164, p. 68). It is clear, however, that the maximum practical flow for the Plant is not 16 MGD because it cannot sustain that flow without losing biosolids and still maintaining compliance with its permit limitations. (Tr. 3/22/00, PCB 98-164, pp. 25, 75, 101-02). This is the very reason that IEPA implemented its policy regarding maximum practical flow. *Id.*

U.S. EPA seeks to have maximum practical flow be defined by the design maximum flow of 16 MGD, which was only applied to the Plant because of IEPA's policy to list design maximum flow as 2 to 2 ½ times the design average flow, which has nothing to do with the Plant's physical capabilities for treatment. (Tr. 3/22/00, PCB 98-164, pp. 71-72). Not only is U.S. EPA's position erroneous because it is impossible to determine with any certainty what the maximum flow rate would be for the Plant, but also because there is no legal basis for it in state, or federal regulations or the Clean Water Act. "Maximum practical flow" is not defined by IEPA precisely because it is viewed as the flow rate that the plant can treat while still meeting its effluent limitations, regardless of what the design maximum flow rate designation may be for the plant. (Tr. 3/22/00, PCB 98-164, pp. 74-75). Finally, IEPA has had this policy of requiring plants to treat maximum practical flow prior to using a CSO bypass since the mid-1980s and applies it to all municipalities in Illinois that have wet weather CSO discharges. (Tr. 3/22/00, PCB 98-164, p. 73). To place the 16 MGD requirement on the City would inconsistently and unfairly treat it differently than any other such municipality in Illinois.

A 16 MGD designation exceeds the capacity of the plant to handle flows and will result in a washout of solids and violation of the permit. (Tr. 3/22/00, PCB 98-164, p. 74-75). Rock Island's Petition for Variance in PCB 98-164 seeks relief from the requirement to meet CSO requirements while carrying out its construction of the necessary improvements to increase the design maximum flow to 16 MGD. Based on the testimony presented, the Board should direct the IEPA to remove the erroneous 16 MGD designation and require only that the Plant must treat the maximum practical flow, which is consistent with its design and the long-standing policy of the IEPA.

2. Outfall 007

The NPDES Permit also erroneously designates Outfall 007 as a sanitary sewer overflow point rather than part of a combined sewer system and prohibits discharges from 007. (Pet. Exh. 12, Exh. A, Special Condition 7). The difference between a Combined Sewer and a Sanitary Sewer is provided in the Board's regulations. At the hearing, IEPA agreed 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. IEPA also agreed 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). IEPA agreed that the sewers tributary to 007 were originally constructed as combined sewers and that they convey more than incidental runoff. (Tr. 3/22/00, PCB 00-073, p. 10, 17). Since then, Rock Island committed to and completed a project to remove catch basins and street drains from the area. (Tr. 3/22/00, PCB 00-073, p. 11). 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).

Rock Island petitioned the Board for an exception from regulations applicable to sewer overflows for Outfall 007 and 010 in PCB 80-212.² (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). 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. (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 a municipal compliance plan to address alleged violations relating to Outfall 007. (Tr. 3/22/00, PCB 00-073, p. 11). Notwithstanding, this sewer was never constructed, reconstructed, or modified in a manner that would convert it to the type of sewer that fulfills the regulatory definition of sanitary sewer. That IEPA agreed that the sewer system would not undergo complete separation is undisputed. (Tr. 3/22/00, PCB 00-073, pp. 13-18). After consultation with IEPA, Rock Island applied for and was issued permits to construct the Franciscan Medical and Saukie Park retention basins on the sewer system tributary to Outfall 007 as part of its municipal compliance plan. (Tr. 3/22/00, PCB 00-073, p. 14). The basins were sized to accommodate a five-year rainfall event. *Id.* Events in excess of the five-year storm or events occurring before the basins emptied would be expected to result in overflows from Outfall 007. (Tr. 3/22/00, PCB 00-073, pp. 14-15). Rock Island constructed these retention basins and

² Outfall 010 has been physically sealed and is removed from the NPDES Permit.

IEPA has never sought to enforce against Rock Island for overflows that occurred as a result of a greater than 5-year rainfall event.

In order to address continuing IEPA concerns with overflows from Outfall 007, and concerns over overflows from sanitary sewers, Rock Island proposed to convert the two storage basins to treatment basins, and IEPA agreed to permit this. (Tr. 3/22/00, PCB 00-073, p. 18). Rock Island has completed construction of modifications to these basins, with the exception of certain electrical equipment, and once these treatment basins are totally operational, Rock Island expects that any overflows from Outfall 007 will be eliminated following the completion of the replacement of the Black Hawk State Park sewer in fall 2000. (Tr. 3/22/00, PCB 00-073, p. 19).

Mr. Huff testified that it is his opinion that with the construction of the retention basins, the sewer allows for conveyance of first flush and flows in excess of ten times dry weather flow rates, and, thus, meets the requirements for CSOs. (Tr. 3/22/00, PCB 00-073, pp. 30-31). In the course of making improvements to eliminate the overflows from Outfall 007, IEPA instructed Rock Island that it was to convey the maximum flow possible (first flush and 10 times dry weather flow) to the proposed new lift station to the basins prior to diversion to the basins. (Tr. 3/22/00, PCB 00-073, p. 20). The reference by IEPA to "first flush 10 times dry weather flows" is a reference to rules that apply to CSOs, and not sanitary sewer overflows. 35 Ill. Adm. Code §306.305; *see also* Tr. 3/22/00, PCB 00-073, p. 20). Thus, IEPA has been treating Outfall 007 as a CSO.

Because Outfall 007 originally was designed and constructed as a CSO, Rock Island and the Board have never treated it as a sanitary sewer, and IEPA has treated it as a CSO during construction of improvements to the system, the Board should correct the factual error in the Permit and properly designate Outfall 007 as a CSO.

WHEREFORE, Rock Island respectfully requests the Board to enter an Order:

1. Recognizing that the Plant's present maximum design flow is 12 MGD, thus eliminating the prohibition on discharging from A01 at flows less than 16 MGD;
2. Designating Outfall 007 as a combined sewer instead of a sanitary sewer, thus removing the prohibition on discharge from this outfall; and
3. Remanding to IEPA the issues of the increase in the chlorine limitation for Outfalls 011 and 012 from 0.75 mg/l to 1.0 mg/l and the clarification of what it would mean to require treatment of 16 MGD.

Respectfully Submitted,

CITY OF ROCK ISLAND,

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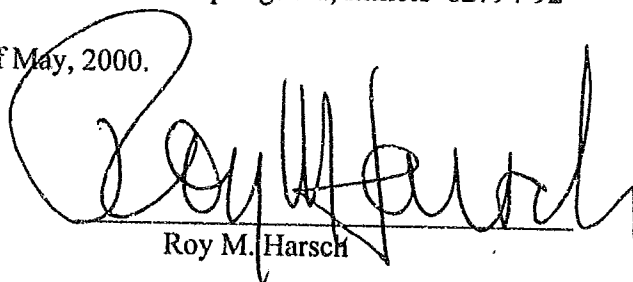
CERTIFICATE OF SERVICE

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

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