

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1976

CITIZENS FOR A BETTER ENVIRONMENT,)	
an Illinois not-for-profit corporation,)	
Complainant,)	
)	
v.)	
)	
UNITED STATES STEEL CORPORATION,)	
Respondent.)	PCB 74-202
-----)	and
UNITED STATES STEEL CORPORATION,)	PCB 73-62
Petitioner,)	
)	
v.)	
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
Respondent.)	

Ms. Helga E. Huber appeared for Citizens for a Better Environment. Mr. John Bernbom appeared for the Environmental Protection Agency. Mr. James T. Harrington (Rooks, Pitts, Fullagar and Poust) appeared for United States Steel Corporation.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter is a consolidation of two cases, the first of which, PCB 73-62, is a permit appeal by United States Steel Corporation (USSC) and the second, PCB 74-202, is an enforcement action against USSC by Citizens for a Better Environment (CBE), an Illinois not-for-profit corporation. The Illinois Environmental Protection Agency (Agency) is Respondent in PCB 73-62.

A Settlement Stipulation (Stipulation) was filed with the Board on September 29, 1975, after which the Board ordered a hearing for the purpose of receiving public comment which hearing was held on November 24, 1975. At the hearing the parties formally presented the previously filed Stipulation along with a joint exhibit consisting of an Illinois operating permit to USSC for its Waukegan Works. No other evidence was presented at the hearing and no members of the public made an appearance.

USSC owns and operates a large manufacturing facility, more commonly known as the "Waukegan Works", for the manufacture of a variety of steel and wire products. Waukegan Works is located in the cities of Waukegan and North Chicago, County of Lake, State of Illinois.

In the course of its operation, USSC withdraws approximately 5.5 million gallons of water per day from Lake Michigan for the cleaning of its products in its Waukegan Works and for the cooling of various facilities. Sanitary wastes are discharged to the North Shore Sanitary District Treatment Facilities and spent acid and other chemicals are collected through a separate system of sewers and removed to other locations for treatment and disposal in accordance with local regulations. The remaining process wastewater, some of which is treated in settling basins, is discharged back into Lake Michigan through 11 separate outfalls.

On September 29, 1972, USSC submitted its Application for Operating Permits for the Waukegan facility and on January 12, 1973, the Agency denied the application alleging that USSC failed to submit a project completion schedule. Subsequent to USSC's application for permit but prior to its denial, an action was filed against USSC in the United States District Court for the Northern District of Illinois, Eastern Division, by the United States of America and the People of the State of Illinois, Case No. 72 C 2503. The relief requested in this case was the cessation of pollution of Lake Michigan by Waukegan Works and that USSC be required to install waste water treatment systems which would eliminate the discharge of contaminants into the Lake.

USSC filed its appeal, PCB 73-62, on February 13, 1973, requesting the Board overrule the denial of the operating permit and grant USSC a variance from the requirement to submit a project completion schedule. USSC has submitted waivers of the provisions of Section 38 of the Illinois Environmental Protection Act (Act) from time to time. CBE commenced its action, PCB 74-202, on May 29, 1974, alleging that USSC discharges effluents into Lake Michigan without an operating permit in violation of Pollution Control Board Regulations (Regulations) 903(a), 501(a), 408(a), 404(a) and 403.

On August 15, 1975, the United States of America and the State of Illinois, USSC and CBE entered into a Consent Agreement in Settlement of Litigation in the United States District Court in Case No. 72 C 2503. This Consent Agreement forms the basis of the Stipulation entered into by the parties herein. The Consent Agreement states, inter alia, that USSC will cease the discharge into Lake Michigan of all its process waters no later than July 1, 1977. On July 1, 1977 and thereafter, USSC will discharge from its Waukegan Works into Lake Michigan only non-contact cooling water free from process and other wastewater discharges and uncontaminated storm water runoff. USSC shall install such recycle systems as are necessary to reduce its total wastewater flow from the present approximate 3,870 gallons per

minute discharged into the Lake to 155 gallons per minute discharged to the North Shore Sanitary District. In addition, during the period between the signing of the Consent Agreement and the completion of the process water collection treatment and recycle system, USSC shall operate its Waukegan Works so as to minimize the discharge of pollutants and shall monitor its effluents in accordance with the schedule and methods contained in the National Pollutant Discharge Elimination System permit which has been granted to Waukegan Works.

The consent agreement is contingent on dismissal or settlement of the instant proceedings before the Board. In addition on page 13 of the consent agreement, ¶13, the Plaintiffs, United States of America and the State of Illinois, agree to release USSC from any liability whatsoever arising out of discharges from USSC's Waukegan Works to the date of the Agreement.

The Board finds the Consent Agreement and the Stipulation presented herein to be the best solution to the problem of Waukegan Works' discharges into Lake Michigan. The final result will be a zero discharge into the Lake of process waters by USSC by July 1, 1977. The parties to these proceedings stipulate to the entry of a Board Order approving the consent agreement and to the entry of any order necessary to carry out the terms and conditions of the Consent Agreement, namely dismissing both the enforcement proceeding, PCB 74-202, and the Permit Denial Appeal, PCB 73-62. The Board will accept the Stipulation and the Consent Agreement and will order both of the aforementioned actions to be dismissed.

The Stipulation also includes a discretionary monetary settlement or monetary penalty that the Board may assess USSC in view of the admission by the company in the Stipulation that they did not have a permit to operate Waukegan Works nor had they received a project completion schedule issued by the Agency. It is the position of CBE that this monetary settlement should be assessed by the Board. USSC, however, alleges that the Board is bound by the terms and conditions of the Consent Agreement signed on behalf of the State of Illinois by William J. Scott, Attorney General, and therefore cannot assess such monetary penalty. The Board finds that the Attorney General has no power to speak for the Board except when specifically acting as the Board's attorney. The Board therefore rejects the proposition that we are bound by the Attorney General's participation in the Consent Agreement. In addition, since the subject matter of the action in the District Court is completely different from the subject matter before the Board, no allegation of privity can be sustained nor would the issues come within the doctrine of res judicata or estoppel by judgment. However the Board finds no useful purpose to be accomplished by imposing a monetary settlement or penalty in this case, especially considering the stipulated dismissal of both actions. Therefore, none shall be assessed.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

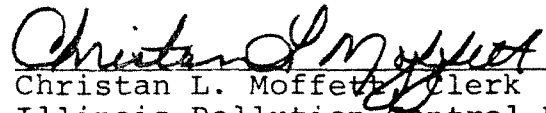
ORDER

It is the Order of the Pollution Control Board that PCB 73-62 and PCB 74-202 be and are hereby dismissed in accordance with the foregoing Opinion.

Mr. Dumelle Concurs.

Mr. Young abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of January, 1976 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board