

Believing that a Federal permit was the only requirement for waste water dischargers, Culligan requested and received from the U. S. EPA copies of a short form application to receive an NPDES permit. The NPDES application was filed with the U. S. EPA on June 17, 1973, shortly prior to the enactment by the Illinois General Assembly of legislation to bring the State of Illinois within the National Pollutant Discharge Elimination System. During the early months of 1973 Culligan should not have been confused regarding the need for an Illinois permit since at that time Illinois had not yet adopted statutory language to establish NPDES as the Illinois system. The need for an Illinois permit was clear.

When the new legislation did become effective in September 1973 it became apparent that the Illinois Legislature wished to avoid a dual permit system. The Statute said: "It is in the interest of the people of the State of Illinois for the State to authorize such NPDES program and secure Federal approval thereof, and thereby to avoid the existance of duplicative, overlapping or conflicting State and Federal statutory permit systems;" [EPA Section 11(a)(5)]. It was further provided: "No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) and Regulations pursuant thereto..."

"In any case where a permit has been timely applied for pursuant to Section 39(b) of this Act but final administrative disposition of such application has not been made, it shall not be a violation of this subsection to discharge without such permit unless the Complainant proves that final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For purposes of this provision, until implementing requirements have been established by the Board and the Agency, all applications deemed filed with the Administrator of the United States Environmental Protection Agency pursuant to the provisions of the Federal Water Pollution Control Act Amendments of 1972 (PL92-500) shall be deemed filed with the Agency."

If Culligan truly was subject to the requirements of NPDES, then under the new Statute a filing with the Federal Agency was all that was required. There seems to be some basis for Culligan's confusion following the legislative enactment of September 1973.

When Culligan's NPDES application was received by the U. S. EPA it was apparently forwarded to the Illinois EPA. On September 10, 1974, some 15 months after the application was filed, an Illinois EPA inspector visited Respondent's plant to discuss the permit application and to take samples of the water at the plant.

On October 11, 1974 the Illinois Pollution Control Board filed with the Illinois Secretary of State a new Regulation which suspended the requirement for obtaining an Illinois operating permit when the discharger is subject to NPDES. One week later the Illinois EPA filed its action contending that Culligan DuPage had neglected to obtain the Illinois permit. It is stipulated by the parties that this was Respondent's "first notification regarding an Illinois permit" and "at all times prior to receiving such notice, Respondent had no knowledge of any requirements of separate permit systems for State and Federal Agencies." It was not until October 31, 1974 that the Illinois EPA sent a letter to the U. S. EPA, with copy to Respondent, stating that a review of Respondent's application showed that no NPDES permit was required for Respondent's operation (Stipulated Exhibit B). The reason for this decision is not stated in the record.

General instructions for submitting the NPDES application contain the following statements: "The Federal Water Pollution Control Act, as amended by Public Law 92-500 enacted October 18, 1972, prohibits any person from discharging pollutants into a waterway from a point source, unless his discharge is authorized by a permit issued either by the U. S. Environmental Protection Agency or by an approved State Agency." However, there are certain exclusions: "You are not required to obtain a permit for the following types of waste discharges: ...(6) most discharges from separate storm sewers. Discharges from storm sewers which receive industrial, municipal, and/or agricultural wastes or which are considered by EPA or a State to be significant contributors to pollution are not excluded".

We can only speculate from this language and from the course of events, that after inspection in September 1974 the Illinois EPA concluded that the Culligan discharge was not industrial waste and was not a significant contributor to pollution. If that is the case then Culligan would not be required to obtain an NPDES permit and would instead, be subject to other permit requirements of the Illinois law. Rule 903(a) of the Illinois Water Pollution Control Regulations provide: "No person shall cause or allow the use or operation of any ... waste water source after December 31, 1972 without an operating permit issued by the Agency, ..."

There are a number of mitigating circumstances in this case. Culligan states that it relied upon information published by the State of Illinois, as shown in Stipulated Exhibit C, which makes no mention of a State permit system but which does describe a permit procedure by which application is made to the U. S. EPA. Following Culligan's application to the U. S. EPA there was a considerable delay before the Company was contacted by the Agency. During all of this time Culligan apparently thought it was protected

by the filing of the NPDES application which had been made in June 1973. The Agency does not question the good faith of Respondent. As a matter of fact, it is stipulated that Culligan was "acting in good faith" in filing with the Federal Agency. Although the Illinois EPA believed Culligan was in good faith the Agency chose not to notify Culligan that it had filed its application with the wrong Agency until after commencing this prosecution.

Upon receiving the notice of Complaint, Culligan contacted the Illinois EPA to determine its responsibilities and to discuss the discharge involved. As a result of meetings with the Agency, Culligan has constructed a backwash recycling system at a cost in excess of \$23,000 to control the discharge of contaminants. This recycling system is reported by Respondent's Engineering Consultant to be capable of allowing Culligan to operate in compliance with the Regulations. Permit application forms are being prepared by Culligan's Consulting Engineer and will be submitted to the Illinois EPA.

Having reviewed the entire record in this matter, it is the finding of the Pollution Control Board that Culligan DuPage Soft Water Service, Inc. did operate a waste water source without an operating permit in violation of the Statute and Board Regulation as charged. The violation was not deliberate--there are extenuating and mitigating circumstances which compel us to reduce the monetary penalty considerably below the level which is ordinarily imposed. Under all of the circumstances we believe that a monetary penalty in the amount of \$150 is appropriate.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that Culligan DuPage Soft Water Service Inc. shall pay to the State of Illinois by May 1, 1975 the sum of \$150 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 26th day of March, 1975 by a vote of 4 to 0.

