

ILLINOIS POLLUTION CONTROL BOARD

July 18, 1974

ENVIRONMENTAL PROTECTION AGENCY)
COMPLAINANT)
)
)
v.) PCB 73-464
) through
) PCB 73-468
COMMONWEALTH EDISON COMPANY)
RESPONDENT)
)

MESSRS. A. DANIEL FELDMAN AND GERALD D. MINDELL, ATTORNEYS, in
behalf of COMMONWEALTH EDISON COMPANY
MR. FREDRIC J. ENTIN, ASSISTANT ATTORNEY GENERAL, in behalf of the
ENVIRONMENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This action involves five separate cases involving four separate generating facilities (two complaints against different units at the same facility), and seventeen separate counts. All seventeen counts address themselves with Petitioner's alleged failure to secure operating permits for various waste water discharges. The complaints were filed on November 5, 1973, and were consolidated by the Board to facilitate matters in that all of the cases were of similar content.

The Agency and Edison have engaged in extensive discovery procedures in an attempt to present the Board with a stipulation for settlement. On January 18, 1974, hearing was held on the question of whether the Agency was to be compelled to answer certain interrogatories. At the close of this hearing the hearing officer, Mr. Dale A. Garwal, stated that he would issue orders as to which interrogatories should be answered. Presumably this question was resolved to the satisfaction of all parties in that a stipulation was submitted to the Board on May 28, 1974. The question before the Board is now whether the proposed stipulation combined with the meager facts presented in this case will suffice to terminate these actions.

A brief description of the five separate actions is now in order.

PCB 73-464: This action involves Edison's Calumet Generating Station located at 3200 East 100th Street, Chicago, Cook County, Illinois. The complaint consists of four counts, each alleging failure to obtain operating permits for discharges to the Calumet River.

1. Non-Contact Cooling Water - required to have permit by June 30,

1973. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

2. Two-Basin Treatment System - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

3. "King Hole" Reservoir receiving plant blowdown, drainage, and leaks - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

4. "Queen Hole" Reservoir receiving plant cooling, drains and leaks - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

PCB 73-465: This action involves Edison's generating station known as Joliet Units 1 and 6, located between Patterson Road and the Des Plaines River in Joliet Township, Will County, Illinois. The complaint consists of 3 counts alleging failure to obtain operating permits for discharges to the Des Plaines River.

1. Non-Contact Cooling Water - required to have permit by June 30, 1973. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

2. Ash and Sluice Water Treatment Systems - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

3. Demineralizer Regenerative System and Associated Sources - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

PCB 73-466: This action involves Edison's generating station known as Joliet Units 7 and 8, located between U.S. Route 6 and the Des Plaines River in Joliet Township, Will County, Illinois. The complaint consists of seven counts alleging failure to obtain operating permits for discharges to the Des Plaines River.

1. Non-Contact Cooling Water - required to have permit by June 30, 1973. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

2. Boiler Blowdown Stream - required to have permit by December 31, 1972. Alleged violation of 903 (a) and 12 (b) of the Environmental Protection Act.

3. House Service Water - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

4. Demineralizer Treatment Tank - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

5. Pyrite Sluice Pond - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

6. Coal Pile Runoff - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

7. Ash and Sluice Water Treatment System - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

PCB 73-467: This action involves Edison's Dixon generating facilities, located at College Avenue and West River Street, Dixon, Lee County, Illinois. The complaint consists of two counts alleging failure to obtain operating permits for discharges to the Rock River.

1. Non-Contact Cooling Water - required to have permit by June 30, 1973. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.
2. Sluice Water for Fly Ash Removal - required to have permit by December 31, 1972. Alleged violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

PCB 73-468: This action involves Edison's Waukegan generating station located at Greenwood Avenue and Lake Michigan, Waukegan, Lake County, Illinois. The generating station circulates Lake Michigan water for cooling purposes (non-contact), and was required to obtain an operating permit for said discharge by June 30, 1973. The alleged failure to do so constitutes a violation of Rule 903 (a) and 12 (b) of the Environmental Protection Act.

In all of the above complaints the Agency seeks the entry of a cease and desist order, imposition of a monetary penalty, and any other final order that the Board may deem appropriate.

The abovementioned "Stipulation and Proposal for Settlement" contain information which allows the Board to render a reasoned decision. The pertinent facts therein contained include the following:

1. Edison admits that it has failed to obtain operating permits for the abovementioned facilities - ¶18 of Stipulation.
2. That the failure to obtain permits in a timely fashion was the result largely of a mutual failure to clarify respective interpretations, rather than the exercise of bad faith.
3. That no penalty seems appropriate in these cases.
4. As a result of good faith efforts, a number of permits have indeed been issued. Such issuance was based on existing conditions which were not properly communicated or understood. This fact is important, in that it indicates to the Board that the discharges in question were, in the Agency's opinion, consistent with the Rules and Regulations of this Board.
5. A definite program for obtaining the remaining required permits, applying for variance, or filing permit appeal cases has been established.

On its face the Stipulation and Proposal for Settlement seems adequate. The only question revolves about the issue of a penalty. As mentioned, both parties feel that because of mitigating circumstances a penalty is not warranted. In other cases before this Board involving permit enforcement actions, we have ordered payment of a penalty, Environmental Protection Agency v. Stainless Processing Co., PCB 73-405; Environmental Protection Agency v. Ozite Corp., PCB 73-330. The permit system may be considered the first line of action in the total regulatory scene. It allows the Agency to obtain records as to where dischargers are and what they are discharging. Without an adequate and enforceable

permit system the entire regulatory scheme would be doomed to failure. The Agency by the powers granted to it in the Environmental Protection Act has the responsibility of maintaining a viable permit system, and as such is cognizant of the above facts. Therefore when the Agency proposes no penalty in a permit action, and supplies facts which mitigate the failure of Respondent to obtain such permits, the Board will give heavy weight to such a request.

A second factor which enters into this decision is whether the failure to gain a permit resulted in any environmental damage. In the instant cases no such showing was made. Failure to gain a permit in these cases seems to be grounded on lack of communication rather than an attempt to bypass the applicable regulations. For the above reasons this Board can accept the proposed stipulation and will so order.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

- A. On or before Aug. 1, 1974, Respondent shall submit application for permit for the following discharges:
1. Dixon - wastewater discharge.
 2. Joliet 1 through 6 - wastewater discharge and non-contact cooling water discharge.
 3. Joliet 1 through 6 (Lincoln Quarry) - wastewater discharge.
 4. Waukegan - non-contact cooling water discharge.

Said applications shall be consistent with those requests for information incorporated in previous denial letters.

- B. In the event that one or more of the above applications are denied, the parties shall schedule a meeting to be held within three weeks of the date of denial to discuss the denials and means to resolve such denials.
- C. Within 30 days of the above meeting or such other time, not to exceed 90 days, agreed to by the Agency, Respondent shall either:
1. Resubmit the denied applications in a form agreed upon, or,
 2. Petition the Board for variance from such rules which it feels is warranted, or,
 3. File a permit denial appeal before the Board.

Such extension of time for resubmittal shall be granted in writing with a copy to the Board detailing the reasons for such extension

- D. Should any resubmittal pursuant to Order C (1) above result in denial, Respondent shall within 30 days of such denial either:

1. Petition the Board for variance, or,
 2. File a permit appeal with the Board.
- E. Respondent shall execute within 30 days of the date of this Order a \$40,000 performance bond guaranteeing compliance with the above orders. Said bond shall provide for forfeiture of one-quarter of its face amount upon nonperformance when timely of any of the requirements of the above Orders, unless Edison can prove the noncompliance resulted for reasons wholly beyond its control. Bond shall be forwarded to the Agency at: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
- F. The above Orders A, B, C, and D shall be modified to reflect any different schedules or nature of submission which may be required by the Board's NPDES regulations when promulgated. Should such modifications be necessitated by action of the Board, Respondent shall promptly make such submissions as may be required.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 18th day of July, 1974, by a vote of 5 to 0.

Christan L. Moffett