

ILLINOIS POLLUTION CONTROL BOARD  
July 2, 1971

Spartan Printing Company Division )	
World Color Press, Inc. )	
v. )	PCB 71-19
Environmental Protection Agency )	
Dissenting opinion (by Mr. Dumelle)	

I agree with the majority opinion in this matter but dissent because in my judgment the penalty of \$10,000 is too low. A penalty of \$25,000 would have been appropriate.

My reasons for this opinion are based on (1) the type of discharge, (2) the extreme delay in installing treatment, and (3) the profits accruing to Spartan from the delay.

First, consider the nature of the discharge as listed in the Spartan variance petition as compared to the approved effluent standards now in effect in the Chicago area under SWB-15. The following table shows that the Spartan discharges are many times stronger (and consequently more toxic) than effluent standards which have been in effect (and are presumably being met) since April 1, 1968. For example, the Spartan chromium discharge, if hexavalent, may be 520 times the present legal effluent standard in that part of Illinois covered by SWB-15.

Parameter	Spartan Effluent Discharge	SWB-15 Effluent Standard	Ratio of Spartan : SWB-15
Iron	35+ mg/l	10.0 mg/l	3.5
Copper	3-28 mg/l	0.04 mg/l	387.5 (computed on average)
Zinc	42+ mg/l	1.0 mg/l	42.0
Chromium	26+ mg/l	0.05 mg/l - Hexa-valent	520.0
		1.0 mg/l Triva-lent	26.0
Silver	0.05 to 0.1 mg/l	0.05 mg/l	1.5 (computed on average)

The Environmental Protection Agency, knowing the quantity of Spartan's flow, might have made a case for a water quality standard violation by a simple computation assuming perfect mixing in the stream. This they did not do and I do not feel that the Board should do it for them. But it seems quite probable that the stream does not provide dilution of 520 times the Spartan waste flow to bring the chromium down to accepted water quality levels as listed in SWB-14 which applies here.

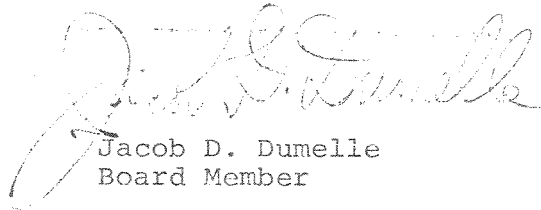
Spartan admits it is causing stream pollution from its discharges. Mr. Paul W. Rothschild, vice-president of Spartan closes a letter of January 15, 1970 to Mr. McSwiggin of the Illinois Department of Public Health by stating "We appreciate your understanding and co-operation in our attempt to control and eliminate the stream pollution as presently caused by our industrial operation." (Pet. Ex. J-19)

Second, consider the delay in installing treatment. Even if the forgiveness of earlier delays by the Sanitary Water Board is accepted, the company was still bound by its schedule in its letter of January 15, 1970 referred to above and accepted by Mr. Clarence Klassen in his letter of February 11, 1970 (Pet. Ex. J-20). The timetable for the completion of Phase I is clearly six months after February 11, 1970 or August 11, 1970. No definite new date was set for the completion of Phase II (the majority opinion is in error on this point) and one would argue that the old date of August 23, 1970 is still legally in effect for Phase II.

The Board majority has granted a variance to Spartan conditioned upon operation of Phase I by July 1, 1971 and has thus forgiven 10-1/2 months of delay. Since the Board agrees that Phase II's design await testing of the effluent of Phase I (to which I concur), the installation of Phase II is similarly delayed 10-1/2 months.

My third and final point is an examination of the profits accruing to Spartan as a result of these 10-1/2 months of delay. The record shows that the treatment facility will cost \$413,475 to build and \$66,290 per year to operate (R.161-2). In 10-1/2 months, Spartan will have saved \$28,900 in interest (estimated at 8% on its capital investment) and \$58,100 in operating cost for a total of \$87,000. The majority has levied a penalty of only \$10,000 which indeed makes it "cheaper to pollute". In my opinion, a penalty of \$25,000 would have been warranted. The Board in a unanimous opinion on another case of corporate delay stated, "It remains true that the company that delays making expenditures for...pollution control is likely to benefit financially at the expense of its innocent neighbors, and a penalty must be imposed as a deterrent" (Marquette Cement Manufacturing Co. v. EPA, PCB 70-23, January 6, 1971). The deterrent of \$10,000 just does not deter in view of the savings from the delay.

Spartan Printing Company is a giant of American Industry. Mr. Clyde Oberlin, a senior vice-president and a director in World Color Press, Spartan's parent company, gave the annual sales as being slightly above \$50,000,000 and net profits between 5% and 6% of sales (R.38-39). FORTUNE magazine in its May 1971 and June 1971 issues lists the top 1000 firms in the United States ranked by sales. Based on their listing, World Color Press would rank high up in the second 1000, probably about No. 1200 in the United States. The giants of American industry should set an example of corporate conscience - they have the resources more than anyone else to solve their pollution problems without delay and the moral obligation to do so. (See discussion in the dissenting opinion in EPA v. Koppers Co., PCB 70-49, June 15, 1971). With annual profits of \$2,500,000 or more, the penalty of \$25,000 which I recommend is only 1% of a year's profit.



Jacob D. Dumelle  
Board Member