

ILLINOIS POLLUTION CONTROL BOARD  
November 29, 1990

CITY OF OGLESBY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-3  
 ) (CSO Exception)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by J. Anderson):

On February 5, 1987, the Board granted the City of Oglesby ("Oglesby") a temporary exception from 35 Ill. Adm. Code 306.305(a) and (b) of the Board's combined sewer overflow ("CSO") regulations. Condition 2 of the February 5, 1987 Order specified that the temporary exception would terminate on March 1, 1990, if Oglesby did not submit an amended petition for permanent exception on or before that date. On June 7, 1990, the Board relinquished its jurisdiction in the matter and closed the docket because Oglesby did not submit an amended petition by the March 1, 1990 deadline.

In response to the Board's June 7, 1990 Opinion and Order, Oglesby filed a Motion for Reconsideration and an Amended Petition on June 29, 1990. On July 6, 1990, the Illinois Environmental Protection Agency ("Agency") filed a "Motion to Extend Time to File a Response to the City's Motion for Reconsideration". On July 19, 1990, the Board issued an order giving the Agency until July 20, 1990, to file its response to the Motion for Reconsideration. On July 26, 1990, the Agency filed a Motion to File Instantly and a Request for Time to Review Petitioner's Amended Petition. On August 9, 1990, the Board issued an order giving the Agency until August 23, 1990, to respond to Oglesby's Amended Petition. The Agency filed its response to Oglesby's Motion for Reconsideration and Amended Petition on September 6, 1990. On September 13, 1990, the Board directed Oglesby to file a reply to the Agency's response on or before October 4, 1990. On October 3, 1990, Oglesby filed its Reply to Agency's Response and a Motion for Leave to File Exhibit B in Reply to Agency's Response with Original Reply Only.

In the Motion for Reconsideration and accompanying Amended Petition, Oglesby requests the Board to reconsider its June 7, 1990 Order, enter an order retaining jurisdiction, and extend its temporary exception from 35 Ill. Adm. Code 306.305(a) and (b) for nine months (i.e. until March 1, 1991), so that it can complete its inspections and monitoring and file a second amended petition

for a permanent CSO exception pursuant to Condition 2 of the Board's February 5, 1987 Order. (Motion pp. 4-5; Am. Pet. p. 4).

In support of its request, Oglesby asserts that denial of the request would create a substantial undue hardship and that it has made a good faith effort to be in compliance with the February 5, 1987 Order. (Motion par. 4). Specifically, Oglesby states that it has complied with all of the provisions of the Board's February 5, 1987 Order with the exception that it failed to file its Amended Petition on or before March 1, 1990, has not complied with the provisions of 35 Ill. Adm. Code 306.361(b) and (c)\* (see condition 3(a) of the Board's February 5, 1987 Order), and has not inspected the ravines and areas below the outfalls pursuant to the time frames specified in condition 3(c) and (e) of the Order. (Motion par. 7; Am. Pet. par. 1).

Oglesby adds, however, that there has been no expansion of its service area tributary to the combined sewers for residential hook-ups exceeding 15 population equivalents without prior Board authorization (see condition 3(b) of the February 5, 1987 Order), that it has maintained its present street sweeping program as part of its program of reducing infiltration and inflow (see condition 3(d) of the February 5, 1987 Order), and that it has continued to inspect diversion chambers, separated sanitary and storm sewers when economically feasible, and constructed a new storm sewer. (Am. Pet. pars. 1, 2). Oglesby also notes that, although its inspections of the outfalls and ravines have not been documented or specifically conducted as specified in the Board's February 5, 1987 Order, its employees have inspected its ravines and outfalls on several occasions. (Id. par. 7).

In terms of economics, Oglesby has spent approximately 1.8 million dollars on improvements to its combined sewer system and wastewater treatment plant. (Motion par. 11; Am. Pet. par. 3). The purpose of such improvements was to reduce the amount of sewerage in the combined sewer system, improve the quality of the combined sewer overflow, and provide improved primary and secondary treatment for flows directed to its wastewater treatment plant. (Motion par. 9, 10). Construction on such improvements began on May 13, 1988, and was substantially completed in January 1990. (Am. Pet. par. 5). Oglesby also spent \$180,000.00 to construct a force main to convey sanitary sewerage that is generated west of an existing sewage pumping station directly to its wastewater treatment plant. (Id.). Although the purpose of the force main was to promote future

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\* These sections require, among other items, an evaluation of receiving stream ratios, known stream uses, accessibility to stream and side land use activities, the frequency and extent of overflow events, unnatural bottom deposits, odors, unnatural floating material or color, stream morphology, stream sediment analyses, biological surveys, and thorough stream chemical analyses.

economic growth and to avoid violations of the Board's February 5, 1987 Order which limited expansion of the service area tributaries to the combined sewers, Oglesby notes that it has also removed a substantial amount of sanitary sewage deposits from the combined sewer system. (Id. par. 4).

Finally, Oglesby also states that it has consulted with the Agency, and that it has prepared a monitoring program that will result in compliance with the provisions of the February 5, 1987 Order and provide the data necessary to present an amended petition for a permanent exception to the Board's CSO regulations. (Id. pars. 8, 12). The monitoring program will be completed on or before September 1, 1990. (Id. 10).

Although the Agency makes no recommendation regarding whether the Board should grant Oglesby's Motion for Reconsideration and Amended Petition, it makes several comments regarding Oglesby's assertions. First, the Agency states that it has no evidence that Oglesby has complied with conditions 3(b), (c), and (e) of the February 5, 1987 Order. (Response par. 1). Second, the Agency questions why Oglesby did not collect any data during the inspections of the ravines and outfalls. (Id. par. 8). Third, the Agency states that it is unaware of any negotiations with Oglesby that resulted in the development of the monitoring program. (Id. pars. 4, 5). Fourth, the Agency states that it does not know whether the monitoring program will result in compliance with the provisions of the February 5, 1987 Order, or whether Oglesby will have the necessary data after completion of the monitoring program to request a permanent exception to 35 Ill. Adm. Code 306.305(a) and (b). (Id. par. 6, 7).

In its reply, Oglesby states that there has been only one expansion of its combined sewer tributaries and that the Board allowed the expansion after Oglesby petitioned the Board, on October 14, 1987, to modify its February 5, 1987 Order. (Reply par. 1). With regard to inspections of the ravines and outfalls, Oglesby states that, as part of its sewerage improvement project, it erected bar screens and diversion structures at nine locations, and that construction of the screens and diversion structures was completed in September of 1988. (Id. par. 2; Amended Pet. par. 6). Because the purpose of the structures was to collect debris flowing from the four combined sewer outfalls, Oglesby argues that there would have been little value in conducting the inspections until the construction had been completed. (Id.). Oglesby adds, however, that its superintendent of the waste water treatment plant, Mr. James Camenisch, inspected the screens, diversion structures, outfalls, and ravines on three successive occasions, and after significant rains, during the fall of 1988 and spring of 1989. (Id.). He determined that no debris had passed through the screens and diversion structures and that there was no further need to continue with his inspections. (Id.). Before the first significant rain in July of 1990, however, Mr. Dale Johnson, an engineer from James Giordano and Associates, inspected the

outfalls and installed rain gauges. (Id.). From July through August of 1990, Mr. Camenisch inspected the outfalls after each significant rainfall (eleven times), and documented his findings in regard to ponding, bottom deposits, odors, floating material, color, and stream morphology. (Id. par. 2, Exhibit B). Such results indicate that, on balance, there was no ponding or unnatural deposits, odors, floating material, color, or stream morphology. (Id.).

With regard to its contact with the Agency, Oglesby states that several city officials talked with Mr. Steve Ewart and Ms. Margaret Howard of the Agency on June 26, 1990. (Id. par. 3). Oglesby states that it was directed to contact Mr. Toby Frevert in the Agency's Program Development and Monitoring Division to develop a testing and monitoring plan that would be suitable and acceptable with the Agency to acquire the results sought in Conditions 3(c) and (e) of the Board's February 5, 1987 Order. (Id.). On June 27, 1990, Oglesby states that Mr. Johnson contacted Mr. Frevert, and that they composed a monitoring program during their conversation. (Id.). Oglesby adds that Mr. Frevert stated that the Agency would cooperate with the city with respect to the monitoring plan but would require its review of the data before expressing any opinion with respect to the program's findings or conclusions. (Id.). As proof of the above assertion, Oglesby attached its June telephone bill which listed the calls (Id. Exhibit F).

Accordingly, Oglesby asks the Board to allow its temporary exception to be extended for 120 days (i.e. until February 3, 1991). (Id. p. 7). During such time, it will discuss its findings in the data compiled from July 1 through September 1990, with the Agency. (Id.). It will then prepare a second amended petition to request that the temporary exception granted in the Board's February 5, 1987 Order be made permanent. (Id.).

Finally, in its Motion for Leave to File Exhibit B in Reply to Agency's Response with Original Reply Only, Oglesby requests the Board to grant leave to allow it to file a single copy of the exhibit which is entitled "City of Oglesby, Illinois Report of Monitoring Program to Comply with Illinois Pollution Control Board Order No. 86-3 February 5th, 1987". (Motion p. 2). In support of the motion, Oglesby states that the exhibit is a 100 page document comprised of a substantial number of photographs as well as the testing and monitoring data collected during July and August of 1990. (Id. pars. 2, 4). Oglesby adds that a copy of the exhibit has been tendered to the Agency and that it intends to make the document a part of its second Amended Petition. (Id. par. 3).

At the outset, in light of the length of Exhibit B, the Board grants Oglesby's motion to file only one copy of the exhibit. With regard to the Motion for Reconsideration, there is no question that Oglesby has not complied with certain aspects of the Board's February 5, 1987 Order. Moreover, Oglesby must

understand that the Board does not find acceptable its attempts to redress its violation of our February 5, 1987 Order at this point in time. Rather, Oglesby should have previously notified the Board of its problems.

On the other hand, we recognize that Oglesby has complied with much of the February 5, 1987 Order. Namely, it has not expanded its service area tributary in violation of condition 3(b) of the Order, it has continued its street sweeping program, it has completed, and expended a substantial sum of money on, improvements to its wastewater treatment plant and combined sewer system, and it has conducted several inspections (albeit not in accordance with the Board's Order) and gathered a considerable amount of monitoring data. These actions indicate that Oglesby has made a good faith effort to comply with the Board's February 5, 1987 Order and that, as Oglesby states, its noncompliance was simply due to administrative oversight.

Moreover, we note that it would create an undue hardship on Oglesby and serve little, if any, environmental purpose if we were to deny Oglesby's motion. Oglesby's wastewater treatment plant and combined sewer upgrades have already been installed, and the data thus far indicates that the upgrades are having the desired effect. A denial of Oglesby's request would only result in Oglesby having to pursue another compliance program (i.e. another design approach) in order to comply with 35 Ill. Adm. Code 306.305 (a) and (b).

Finally, we wish to note that, in all practicality, Oglesby needs an extension of time in which to file its amended petition. The reason that the Board gave a limited exception in the first place was because we had difficulty in interpreting Oglesby's data regarding the effects of its proposed compliance plan. Accordingly, although it is not apparent in our February 5, 1987 Order, the accompanying opinion indicates that we allotted Oglesby 20 months after the point of "Full Plant Operation and Meeting NPDES Limits" (July 1, 1988 to March 1, 1990) to gather such data. It is clear that Oglesby could not file its amended petition on March 1, 1990, because construction was completed in January of 1990 rather than on July 1, 1988, and it did not have its 20 months of monitoring data as a result of such delay and its lack of administrative oversight.

Thus, although we emphasize that we do not excuse Oglesby's failure to petition the Board for relief from those conditions that it could not comply with, we will give Oglesby the benefit of the doubt in this instance. Accordingly, we vacate our June 7, 1990 Order in which we relinquished jurisdiction in this matter, and grant Oglesby's Motion for Reconsideration and the relief requested therein. In making this ruling we wish to make two final notations. First, our decision assumes that the Agency agreed to Oglesby's monitoring program and that the Agency will be reviewing Oglesby's data during the extension. We ask the Agency to notify us within 30 days, via a Motion for

Reconsideration, if this understanding is incorrect. If, on the other hand, the Agency did agree to the monitoring program, we ask that it notify us if the date by which it will complete its review of the data is not compatible with this order. Second, we note that our decision is subject to certain conditions. We will not tolerate any deviance from strict compliance with such conditions unless Oglesby petitions the Board for relief.

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

ORDER

1. Except as provided in paragraph 2 of this Order, the City of Oglesby is granted a temporary exception, until February 3, 1991, from 35 Ill. Adm. Code 306.305(a) regarding first flush of storm flows and from 35 Ill. Adm. Code 306.305(b).
2. If, on or before February 3, 1991, the City of Oglesby fails to submit an amended petition for permanent exception, this temporary exception will terminate on February 3, 1991.
3. During this temporary exception period the City of Oglesby, in consultation with the Agency, shall, at a minimum:
  - a) Comply with the provisions of 35 Ill. Adm. Code 306.361(b) and (c) unless, pursuant to subsection (d) the City of Oglesby includes a justification in its amended petition for the inapplicability of the required evaluations, or the Agency as a joint petitioner agrees that there is a minimal discharge impact.
  - b) Unless authorized by the Board upon a petition for modification of this order, there shall be no expansion of the service area tributary to the combined sewers except for residential hookups that do not exceed 15 population equivalents as defined in 35 Ill. Adm. Code 301.345.
  - c) The City of Oglesby shall inspect the ravines below all outfalls for ponding at least once before the expiration of this temporary extension and, except for the present ponding below CSO 4, shall either timely eliminate all ponding or justify in the amended petition that elimination is technically infeasible or economically unreasonable.
  - d) The City of Oglesby shall continue its present street sweeping program and its proposed program of reducing infiltration and inflow, inspection of diversion chambers, and construction of storm sewers.
  - e) Pursuant to 35 Ill. Adm. Code 306.361(a), the City of Oglesby shall inspect below the outfalls at least once

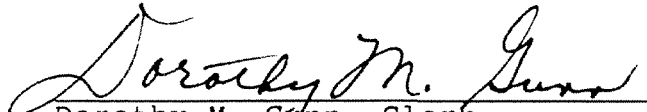
before the expiration of this temporary extension for unnatural bottom deposits, odors, unnatural floating material or color, stream morphology, and results of limited stream chemical analysis; the City also shall measure and test overflow events at CSO 1, 2, and 3 sufficient to determine their frequency, extent, and quality.

4. The Board will retain jurisdiction in this matter.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$  par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 29<sup>th</sup> day of November 1990, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board