

ILLINOIS POLLUTION CONTROL BOARD  
December 18, 1980

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 78-137  
 )  
 CITY OF SALEM, )  
 )  
 Respondent. )

MARY E. DRAKE AND VINCENT MORETH, ASSISTANT ATTORNEYS GENERAL,  
APPEARED ON BEHALF OF COMPLAINANT.

ALFRED S. PFAFF, MILLER, PFAFF & GAINER, AND MICHAEL JONES APPEARED  
ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon the five count amended Complaint filed December 19, 1978 by the Illinois Environmental Protection Agency (Agency) against the City of Salem (Salem), alleging violations of the Environmental Protection Act (Act) and of Chapter 3: Water Pollution (Chapter 3). At hearing held March 14, 1980 the parties outlined a proposed stipulation and settlement agreement which did not contain a stipulated penalty, but instead stated their intention to submit briefs concerning an appropriate penalty. However, the parties' Statement of Stipulated Agreement filed April 9, 1980 contained a proposed stipulated penalty of \$2500. By its Order of July 24, 1980 the Board rejected this stipulation because of failure to present the stipulated penalty at hearing, and because of insufficient record information concerning the size of penalty. At hearing held November 21, 1980, the parties resubmitted their stipulation and presented testimony concerning the stipulated penalty of \$2500.

The City of Salem, which is located in Marion County, owns and operates a sewage treatment facility serving a population of approximately seven thousand people. Salem was notified by the Agency on or about November 28-29, 1977, December 8 and 15, 1977, and February 8, 1978 that the facility was not being operated in compliance with the conditions of Salem's NPDES permit. Salem admits the violations charged in the Agency's original and amended complaints (Stip. 2-4).

These admitted violations are:

1. excursions beyond the permitted 30 day and 7 day arithmetic mean quantities and concentrations of BOD<sub>5</sub> and suspended solids during each of the months between November<sup>5</sup>, 1977 and September, 1978, in violation of Rules 410(a) and 901 of Chapter 3 and of Section 12(f) of the Act (Counts I and II);

2. excursions beyond the permitted geometric mean values for fecal coliform bacteria during June, July, and September, 1978 in violation of Rules 410(a) and 901 of Chapter 3 and Section 12(f) of the Act (Count III);

3. failure to monitor and report data concerning fecal coliform bacteria during each of the months between and including November, 1977 and May 1978 but excluding February, 1978 in violation of Rule 901 of Chapter 3 and Section 12(f) of the Act (Count 4); and

4. failure to maintain flows through the facility at or below the design maximum of 1.0 mgd for each of the months between and including November, 1977 and September, 1978 exclusive of February and July, in violation of Rule 901 of Chapter 3 and of Section 12 (f) of the Act.

The proposed compliance program consists of an interim work program and a long-range plan. The interim program would require Salem to a) take measures to reduce inflow into the sanitary sewer system, e.g. disconnection of downspouts and yard drains, b) seal certain manholes subject to flooding, c) employ sufficient numbers of qualified persons to properly operate its plant, and d) install a coarse bar screen before the plant barminuter. The long-range plan would require Salem to seek grant funding and then to expand, upgrade, and modify its facility in accordance with a stipulated schedule. The anticipated date for completion of this project and for full compliance with water pollution rules is July 1, 1983 (Stip. 5-7 and Schedule A).

In mitigation, Salem states that the excursions and heavy flows ranging from 14% to 300% above design capacity are due to improper design of the facility, which renders it inadequate to handle increased flows during periods of rainfall. Following rainfalls, the large flows entering the facility wash the biological solids necessary for Salem's activated sludge process into the receiving stream. These washouts have a double result: the solids themselves add to the pollution load in the stream, and loss of the solids reduces the plant's treatment efficiency, causing the effluent discharged during these periods to contain high levels of pollutants. Salem's washout problems and resulting violations have continued through the date of the parties' settlement statement, although Salem has been negotiating with the Agency since it filed its first Complaint (Stip 4). However, in justification of the proposed stipulated penalty of \$2500, the Agency in argument points out that Salem saved substantial amounts by non-compliance, e.g. salaries of 3 additional personnel at approximately \$16,000 per year each, and approximately \$3,000 annually for the interest it would have had to pay holders of bonds issued to finance plant improvements (R. 4-5 of 11-21-80).

Having considered the facts and circumstances of this stipulation in light of Section 33(c) of the Act and Procedural Rule 331, the Board finds it to be acceptable. The Board notes that the actions outlined in the interim compliance program were agreed to have been completed in May through September, 1980, and assumes that such actions have been completed or extended by mutual agreement under the force majeure clause. The Board will retain jurisdiction in this matter for one year, for the purpose of resolving any disputes arising from the stipulation's force majeure clause.

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

ORDER

1. Respondent, the City of Salem, is hereby found to have violated Section 12(f) of the Environmental Protection Act, and Rules 410(a) and 901 of Chapter 3: Water Pollution.

2. Respondent shall timely perform all actions agreed to in the "Statement of Stipulated Settlement" which is incorporated by reference herein as if fully set forth.

3. Within 30 days of the date of this Order, Respondent shall, by certified check or money order payable to the State of Illinois, pay a stipulated penalty of \$2500 which is to be sent to:

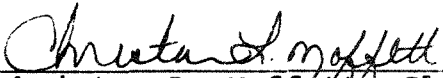
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
Fiscal Services Division  
2200 Churchill Road  
Springfield, IL 62706

4. The Board shall retain jurisdiction in this matter for one year.

Mr. Dumelle concurred.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 18<sup>th</sup> day of December, 1980 by a vote of 4-0.

  
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Christan L. Moffett Clerk  
Illinois Pollution Control Board