

ILLINOIS POLLUTION CONTROL BOARD
February 4, 1982

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 81-110
)
 ROESCH, INC., a foreign corporation,)
)
 Respondent.)

MS. CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

MR. GORDON MAAG, ESQ., APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed by the Illinois Environmental Protection (Agency) on July 2, 1981 alleging violations of various rules of Chapter 3: Water Pollution and various sections of the Environmental Protection Act (Act). Hearing was held on January 14, 1982 in Belleville, Illinois at which only the parties and a reporter appeared. A Stipulation and Proposal for Settlement was entered as Joint Exhibit #1 in lieu of other evidence and argument.

Roesch, Inc. is a Delaware corporation, duly licensed to transact business in Illinois, which operates an enamel coating facility located at 100 North 28th Street in Belleville, St. Clair County. The facility discharges wastewater pursuant to NPDES Permit Number IL0000370 into an unnamed ditch which is tributary to Catawba Creek. That permit expired by its own terms on August 31, 1978, but continues in effect due to timely reapplication and non-action by the Agency. Beginning July 1, 1977, it authorizes discharge from a single outfall, numbered 001. However, based upon Roesch's Discharge Monitoring Reports (DMR's) and Agency computed concentration figures (since the DMR's reported only the quantity discharged), the following table indicates discharges from four outfalls (numbered 001-004) at levels in violation of the permit (Stip. 3-4):

Date/Outfall	Barium Avg./Max.	Chromium ¹ Avg./Max.	Copper Avg./Max.	Nickel Avg./Max.	TSS ² Avg./Max.	pH	
						Min./Avg./Max.	
NPDES Permit Limitations ³	(mg/l) 2.0	0.3	1.0 ⁴	1.0	15.0	6	9
11/77 002	29/35	0.5/0.5	1.5/1.7	1.4/1.4	261/265	4.0/4.0/4.0	
11/77 003	11/19				512/497		
12/77 All	5/5			1.5/1.5	461/456		
1/78 002	20/25	0.5/0.5	1.6/2.0	1.4/1.5 ⁵	252/260	4.0/4.0/4.0	
2/78 All	7/10	/0.4		1.5/1.4	482/499	4.0	
3/78 002	18/20	0.4/0.4	1.5/1.6	1.5/1.5	250/268		
3/78 003	12/19	/0.4			479/504		
4/78 All	22/23	0.4/0.5		1.4/1.4	295/296		
5/78 002	15/15	0.4/0.4	1.4/1.5	1.4/1.5	270/270	4.0/4.6	
5/78 003	19/19				489/498		
6/78 All	18/20	0.4/0.4		1.4/1.4	492/477		
7/78 002	20/20	0.5/0.5	1.4/1.4	1.5/1.5	246/253	4.0/4.9	
7/78 003	16/19				497/498		
8/78 All	20/30		2.0/2.0	1.5/1.5	485/496	4.0/4.1/4.2	
9/78 002	12/20		1.9/1.9	1.5/1.5	263/479	4.0/4.9	
9/78 003	15/20			/1.2	461/493	9.2/9.3	
10/78 All	13/21		1.4/1.6	1.4/1.6	476/498		

1 Chromium concentrations are the trivalent form, which, the Board notes has now been deleted from the effluent standards (see R76-21, August 20, 1981) and has been replaced with hexavalent and total chromium standards.

2 TSS = Total Suspended Solids

3 Permit limitations are expressed as mg/l (milligrams/liter) except for pH

4 The Board notes that this standard has now been changed to 0.5 from 1.0 (see R76-21, August 20, 1981)

5 Some of the average concentrations given are higher than the maximum, which, of course, cannot be true. The Board cannot determine whether this error is due to DMR inaccuracies, Agency computations, or typographical errors. However, in no case do these discrepancies appear significant.

On April 23, 1980, Agency grab samples showed that Roesch caused or allowed the discharge of the following effluent concentrations (in mg/l) from outfalls numbered 002, 003, and 004 at its facility (Stip. 5):

<u>Parameter</u>	<u>B-1 Outfall 002</u>	<u>B-2 Outfall 003</u>	<u>B-3 Outfall 004</u>
Barium (total)	-	14.0	-
Iron (total)	450	-	23
Lead (total)	-	-	1.5
Nickel (total)	170.0	-	-
Total Suspended Solids	-	1700	520
pH	1.7	-	10.8

These effluent concentrations in the wastewater discharges exceed by at least five times the numerical standard prescribed. The Board notes that the effluent standard for lead has been changed from 0.1 mg/l to 0.2 mg/l since the date of this complaint such that the violation of lead discharge would now be 7.5 times. The figures in Water Pollution Rule 408(a) for each parameter and outfall are as follows:

<u>Parameter</u>	<u>Outfall 002</u>	<u>Outfall 003</u>	<u>Outfall 004</u>
Barium (total)		7 times the standard	
Iron (total)	225 times the standard		11 times the standard
Lead			15 times the standard
Nickel (total)	170 times the standard		
TSS		113 times the standard	34 times the standard

On April 23, 1980, Agency samples from the drainage ditch below Roesch's outfall points ("C-1"), and from the Catawba Creek downstream ("C-2" and "C-3") of the confluence with the drainage ditch, show the following levels of chemical constituents to be present:

<u>Parameter</u>	<u>C-3</u>	<u>C-2</u>	<u>C-1</u>
Copper (total)	0.10	0.14	0.24
Iron (total)	13.0	42.0	69.0
Lead (total)	-	-	0.2
Manganese (total)	-	3.4	1.4
Nickel (total)	2.2	7.0	12.0
Zinc (total)	-	2.1	1.9
Fluoride	3.15	11.9	1.9
Sulfate	-	680.0	-

The concentrations for the constituents set forth in each water quality sample listed above exceed the limitations of Water Pollution Rule 203(f) (Stip. 6).

The stipulated facts further demonstrate that Roesch failed to file proper DMR's pursuant to its NPDES Permit in that it did not file DMR's including effluent concentrations since October 24, 1977, and did not file DMR's in accordance with the permit schedule since December, 1978 (Stip. 8).

The NPDES Permit also required that Roesch construct pre-treatment works or treatment works to achieve compliance with final effluent limitations or to divert its discharges by July 1, 1981 (Stip. 8). Such construction or diversion was not accomplished by that date.

Finally, the stipulation indicates that discharges from Roesch's facility caused environmental harm (Stip. 9). On July 11, 1980, the Agency received complaints from nine residents downstream of the Roesch facility on Catawba Creek, complaining that water from the Creek had been used on two residents' gardens, and that the water had destroyed the vegetables growing therein. On July 17, 1980, Agency Field Office Specialist, Nick Mahlandt, inspected Catawba Creek and observed brown coloration in the discharge from Roesch and on into Catawba Creek. In following up the incident, the Agency learned that two downstream residents suffered a temporary skin rash from contact with Catawba Creek water as they watered their garden.

Further, on or about June 1, 1980, and continuing until the filing of the Complaint in this action, Roesch discharged contaminants from its facility to Catawba Creek in such manner as to create a nuisance and render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life in that water from Catawba Creek caused garden plants to wilt and die, caused rashes and a burning sensation to those utilizing such waters, and unreasonably interfered with the use and enjoyment of one's property.

Based upon these facts and admissions made by Roesch in the Proposal for Settlement, the Board finds that Roesch:

1. Caused or allowed water pollution by exceeding the effluent limitations of its NPDES Permit and of Rule 408(a) of Chapter 3: Water Pollution, thereby also violating Rule 901 and Sections 12(a) and (f) of the Act;
2. Discharged wastewater from three outfalls after July 1, 1977, which discharges were not authorized by its NPDES Permit, thereby violating Water Pollution Rule 901 and Sections 12(a) and (f) of the Act;

3. Exceeded the effluent limitations of Water Pollution Rule 408(a) in excess of five times the standard from its outfalls indentified as 002, 003 and 004, thereby violating Water Pollution Rules 408(a), 410(c) and Section 12(a) of the Act;
4. Caused or allowed the drainage ditch into which it discharged and Catawba Creek to exceed the Water Quality Standards of Chapter 3, thereby violating Water Pollution Rule 402 and Section 12(a) of the Act;
5. Failed to report concentration on its DMR's and failed to submit timely DMR's as required by its NPDES Permit in violation of Water Pollution Rules 501(c) and 901 and of Section 12(f) of the Act;
6. Failed to construct pre-treatment or treatment works or to divert its discharges so as to achieve its final effluent limitations by July 1, 1977 as required by its NPDES Permit in violation of Water Pollution Rule 901 and Section 12(f) of the Act; and
7. Caused or allowed the discharge of contaminants so as to cause water pollution in violation of Section 12(a) of the Act.

The Board notes that the extent of violation is based upon the law at the time of violation and would be affected by subsequent changes in the law. However, Roesch has stipulated to these violations and the changes are not of substantial consequence given the gross nature of the violations. Therefore, the Board need not reach the question of the applicable law.

The Proposal for Settlement of this matter includes a cease and desist order, co-operation between Roesch and the Agency as to Roesch's obligations under its NPDES permit, and a penalty of \$10,000 which is to be paid in ten monthly installments. However, no date is given for the first payment. Therefore, the Board will order that the first payment be made on or before April 1, 1982 and the subsequent payments be made on or before the first of each subsequent month.

Having been fully apprised of the facts and circumstances of this case, and noting in particular that Roesch has now begun operation of a pre-treatment facility which should abate past problems and insure that these problems do not recur, the Board finds that the Proposal for Settlement is acceptable under Procedural Rule 331 and that the penalty is necessary to aid in the enforcement of the Act.

The Board finally notes that the Stipulation and Proposal for Settlement of this matter is quite thorough and could serve as a model for the type of stipulation which the Board envisions under its settlement procedure.

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

ORDER


1. Roesch, Inc., is found to have violated Rules 402, 408(a), 410(c), 501(c) and 901 of Chapter 3: Water Pollution and Sections 12(a) and (f) of the Environmental Protection Act.
2. Roesch, Inc., shall pay a penalty of \$10,000, which shall be paid in payments of \$1,000 per month for ten consecutive months. The first payment shall be made on or before April 1, 1982 and subsequent payments shall be paid on or before the first day of each subsequent month. Payment shall be by certified check or money order payable to the State of Illinois and sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

3. Roesch, Inc., shall otherwise comply with all the terms and conditions of the January 21, 1982 Stipulation and Proposal for Settlement in this matter which is hereby incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 4th day of February, 1982 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board