

ILLINOIS POLLUTION CONTROL BOARD
July 12, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-130
)
 CITY OF JOLIET, a municipal)
 corporation,)
)
 Respondent.)

Mr. William Blakney, Assistant Attorney General, appeared for the Complainant;
Mr. Nicholas E. Sakellariou, Assistant Corporation Counsel, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Young):

This matter comes before the Board on an Amended Complaint filed by the Environmental Protection Agency on July 11, 1978, alleging that the City of Joliet's East Side Sewage Treatment Plant was in violation of its NPDES permit and Sections 12(a), 12(b) and 12(f) of the Environmental Protection Act and Rules 901 and 910(f) of Chapter 3: Water Pollution Regulations. In Counts I and II, the Amended Complaint alleged that the East Side Plant exceeded its NPDES permit limitations for BOD₅ and total suspended solids (TSS) for the months of February and March, 1978. Count III charged that the Respondent failed to report February and March excursions within 5 days as required by its NPDES permit and in Count IV the Complainant alleged that the Respondent filed a false report to the Agency in violation of the terms of its NPDES permit and Rule 910(f) of Chapter 3.

On August 9, 1978, the City of Joliet filed a Motion to Dismiss and submitted an Affirmative Defense attached to an Answer to Complaint. In the pleading entitled "Motion to Dismiss," the Respondent admitted to violations of the terms in its NPDES permit and stipulated that the February, 1978 Discharge Monitoring Report (DMR) and the February, 1978 Sewage Treatment Works Operation Report (SOR), which were sent to the Agency's Maywood office contained erroneous data. Respondent claimed this action should be dismissed because the report submitted to the Maywood office was an unofficial report that did not constitute a violation of Rule 910(f) of Chapter 3. On August 14, 1978, the Agency responded with an Objection to Motion to Dismiss and a Motion to Strike the Affirmative Defense.

Count IV of the Complaint alleges that the Respondent submitted a false Discharge Monitoring Report in violation of Rule 910(f) of Chapter 3 and the terms of the Respondent's NPDES permit and requests that the Board impose a penalty pursuant to Section 42(a) of the Act.

Rule 910(f) imposes no duty on the Respondent; the rule contains a delegation of authority to the Environmental Protection Agency to establish recording, reporting, monitoring and sampling requirements in NPDES permits and requires that the Agency include such requirements as conditions in the NPDES permit issued to a holder.

Knowing submission of false information under any permit or term or condition thereof is a Class A misdemeanor under Section 44(a); Section 44(b) provides that it is a criminal offense for any person knowingly to violate subsection (f) of Section 12 or any provision of any regulation, standard or filing requirement adopted under Section 13(b) or Section 39(b), or any NPDES permit issued under the Act, or term or condition thereof. Any person convicted of such violation may be fined not more than \$25,000.00 per day and an individual convicted may be sentenced to imprisonment not to exceed one year. Section 44(c) provides that it is a criminal offense for any person to knowingly make a false statement in a report required by the terms of an NPDES permit. Any person convicted of such violation shall be fined not more than \$10,000.00 and, in addition, any individual convicted of such violation may be sentenced to imprisonment not to exceed six months. Section 44(e) provides that a corporation may be held responsible for any Section 44 offense; 44(f) defines the term "person" to include both the definition in Section 3(j) of the Act and Article 5 of the Criminal Code. Section 44(g) provides that any action under Section 44 be conducted in accordance with the code of Criminal Procedure, adopted August 14, 1963, as amended.

Despite the fact of the Board finding that the allegation of a violation of Rule 910(f) is not proper here, filing of a false report is a violation of the Act and actionable under Section 44. Because the Board has no jurisdiction under Section 44, Count IV of the Complaint must be dismissed and we hold that the submission of false information or false reports under the Act or our regulations is actionable only through the provisions of Section 44.

Accordingly, Count IV is hereby dismissed. The Board will defer the matters raised in Respondent's Affirmative Defense to be discussed with the evidence in mitigation.

The City of Joliet owns and operates the Joliet East Side Sewage Treatment Plant which is authorized to discharge a design flow of 22.5 MGD with an effluent quality of 20 mg/l BOD₅ and 25 mg/l total suspended solids to the Hickory Creek upstream from the DesPlaines River. The discharge limitations are contained with other effluent limitations and monitoring and operational requirements in NPDES Permit IL0022519 which was issued to the Respondent on June 30, 1977, by the USEPA. (Complainant's Exhibit A).

In testimony at the hearing, the City of Joliet revealed that both comminuters had experienced mechanical breakdowns and had problems with its settling tanks in its treatment system during a period extending from January through March, 1978. The comminuters were out of service for these three months while both were being repaired at a foundry at a cost of \$18,000. During this period, the City of Joliet implemented interim measures which included increasing the sewage flow rate at its East Side Plant causing significantly higher BOD₅ and total suspended solids effluent levels. The revised February DMR submitted to the Agency on April 7, 1978, indicated that the BOD₅/TSS effluent concentrations were 24.1 mg/l and 138.5 mg/l respectively. (Complainant's Exhibit C, Respondent's Exhibit #2).

While the City of Joliet implemented interim measures to reduce the impact of the mechanical failures, the record discloses that the Respondent made no affirmative effort to contact or inform the Agency of the casualty. Information in the record indicated that the East Side Plant exceeded the limitations of its NPDES permit early in February, 1978. However, the Respondent did not submit a report to the Agency about this excursion until April 4, 1978, when it responded to an Agency Compliance Inquiry Letter. (Complainant's Exhibit F, Respondent's Exhibit #2).

The City of Joliet stipulated that it exceeded its effluent limitations in its NPDES permit during February and March, 1978 and that it failed to report the excursions within the 5-day limitation as required by its NPDES permit. (R. 6-7, Complainant's Exhibit #1, Responses 4-9). In view of these admissions and the evidence in the record, the Board finds the City of Joliet in violation of Sections 12(a), 12(b) and 12(f) of the Act and Rule 901 of Chapter 3, for discharge of effluent in concentrations exceeding the terms of the NPDES permit and for failing to report the casualty in violation of the terms and conditions of its NPDES permit.

Before considering the penalty provisions of the Act, the Board will review Respondent's case in mitigation pleaded in its Affirmative Defense and submitted as testimony during the hearing. The record indicates that the Respondent worked diligently and expended a sizable amount of money to correct

the mechanical failures and implement interim measures to minimize the extent of the casualty. However, the City of Joliet failed to notify the Agency or outline the problems and the proposed remedial action in writing until April 4, 1978. This conduct is in direct violation of Respondent's NPDES permit, Attachment B, General Condition #9 on page 10. (Complainant's Exhibit A).

In defense of its failure to comply with the permit requirements, Respondent's Superintendent of the East Side Plant claimed that he did not know of the notice requirements at the time of the excursion. The record also indicates that Respondent's Superintendent neglected to submit the January and February DMR's until April 7, 1978, because of his misinterpretation of an Agency letter. The Board realizes that honest mistakes do occur, but such failures to comply with explicit requirements of the permit will not constitute a defense to the resulting omission. (R. 36, 51-54).

In considering this case in light of Section 33(c) factors, the Board notes that the violations of the permit effluent limitations were the result of mechanical failures in two identical devices; such simultaneous failures are not normally anticipated. However, the Respondent is also in violation of its NPDES permit requirements for failing to comply with the reporting requirements. The social and economic value or the suitability of the site are not in question in this case. Although compliance with the NPDES permit requirements as to notice are technically practicable and economically reasonable, the Respondent did not promptly report any casualty or excess discharges of pollutants to the Agency as required by the permit. These practices are not only potentially damaging to the effective operation of the NPDES permit program and the Water Quality Monitoring Program but prevent the Agency from providing an appropriate response to alert downstream users and public water supplies of potential hazards resulting from such discharges.

In view of our findings, the Board finds that a penalty for violation of the effluent limitations in this case would not aid in the enforcement of the Act. However, the Board will assess a penalty of \$500.00 against the Respondent to ensure that the reporting requirements will be followed in the future.

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

ORDER

1. Respondent, City of Joliet, is found to be in violation of Sections 12(a), 12(b) and 12(f) of the Environmental

Protection Act and Rule 901 of Chapter 3: Water Pollution Regulations for discharging effluent in February and March, 1978, from the Joliet East Side Sewage Treatment Plant in violation of the applicable NPDES permit and for failing to report such discharge as required by the terms of the permit.

2. The charge against the Respondent, City of Joliet, alleging violation of Rule 910(f) of Chapter 3 is hereby dismissed.

3. In accordance with this Opinion, Respondent, City of Joliet, shall pay a penalty of \$500.00 within 35 days of this Order. Payment shall be by certified check or money order payable to:

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

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 12th day of July, 1979, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board