

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
 v.) PCB 75-242
)
)
 CITY OF SPRINGFIELD,)
)
 Respondent.)

Mr. Anthony Cameron appeared on behalf of Complainant.
Mr. Mark Virshbo of Isham, Lincoln & Beale appeared on behalf
of Respondent.

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

This matter comes before the Pollution Control Board (Board) upon the Complaint filed on June 16, 1975, by the Environmental Protection Agency (Agency) against the City of Springfield (City). The Complaint charges the City with construction of a wastewater source without a permit, in violation of Section 12(b) of the Environmental Protection Act (Act) and Rule 951 of the Water Regulations (Chapter 3). A hearing was held in this matter on December 18, 1975, in Springfield, Illinois. At that hearing, a Stipulation and Proposal for Settlement (Stipulation), representing the final agreement of the parties, was entered into evidence. No other evidence was presented, and no citizen witnesses were present.

The parties agree that, prior to the filing of the Agency's complaint, the City began construction on an electric generating unit known as Dallman Unit 3. When operational, Dallman Unit 3 will discharge condenser cooling water through a cooling water tunnel into Lake Springfield. The construction which the Agency complained of was the excavation of an approximately twenty-foot long portion of a five-foot wide trench. This trench is intended to serve to discharge condenser cooling water to Lake Springfield from Dallman Unit 3. The Agency agrees that the trench is sealed by earth at both ends, has never discharged water to Lake Springfield, and could not be operated to discharge prior to the summer of 1977, at the earliest. The City admits that it did not obtain a permit with respect to said

construction as required by Rule 951 of Chapter 3.

Rule 951 provides, in pertinent part:

"Except for...wastewater sources which will have discharges for which NPDES permits are required, and for which permits have been issued by the Agency:

(a) No person shall cause or allow the construction of any new...wastewater source without a Construction Permit issued by the Agency."

Rule 104 defines wastewater source as:

"...any equipment, facility...which discharges wastewater, directly or indirectly... to the waters of the state."
(Emphasis added.)

In the Stipulation, the City indicates that its failure to obtain a construction permit was due to a misunderstanding of the permit requirement. That misunderstanding concerned the status of the NPDES program and a belief that Lake Springfield was a "treatment works" rather than a "water of the state."

The City on June 30, 1975, obtained an NPDES permit from the U.S. Environmental Protection Agency for its electric generating facility. The permit does not provide for the cooling water discharge proposed to be made from Dallman Unit 3. The City's original NPDES permit application was based on the belief that Lake Springfield was not a "water of the state."

The City now accepts that Lake Springfield is a "water of the state." Lake Springfield is a reservoir artificially constructed to cool condenser discharges from steam-electric plants prior to discharge to other waters of the state. The Board has in the past found such a cooling lake to be a "water of the state". Central Illinois Public Service Company v. EPA, 11 PCB 677. Lake Springfield is, therefore, a "water of the state" rather than a "treatment works", and a permit was required under Rule 951 for equipment discharging wastewater to the lake.

In the Terms of Settlement, the parties agree to the following conditions:

(a) On or before December 31, 1975, Respondent shall file with the Permit Section of the Division of Water Pollution Control of the Agency an application for a construction

permit under Rule 951 of Chapter 3, upon Agency Form WPC-PS-1 with Schedules J and N attached, and shall thereafter upon the Agency's request provide the Agency with any additional information which the Agency may properly request in the ordinary course of its processing a permit application for the kind of facility involved.

(b) Immediately upon execution of this Stipulation, Respondent shall cease and desist from any further construction of its Dallman Unit 3 cooling water intake and discharge structures until it has received the requisite construction permit or authorization to construct.

(c) Respondent shall within a reasonable time take all steps necessary to withdraw its contention, in its request to U.S. Environmental Protection Agency for an adjudicatory hearing with respect to the NPDES permit issued for its electric generating facility, that, under currently existing laws and regulations, Lake Springfield is not a water of the State; shall comply, pursuant to the finally-adjudicated terms and conditions of said NPDES permit, with all applicable effluent and water quality standards, including but not limited to thermal discharge standards, for all discharges from its electric generating facility into Lake Springfield, including but limited to any from its Dallman Unit 3; and, shall request a modification of said NPDES permit to provide for the cooling water discharge proposed to be made from its Dallman Unit 3 no later than 180 days prior to the time the discharge is to occur, in accordance with the provisions of the FWPCA, or at such other time as may be required by any amendment hereafter in existing regulations.

(d) Respondent shall, no later than 35 days from the date of entry of this Order, pay the amount of \$550.00 to the Agency.

The Board finds that the City of Springfield has, by its construction work on Dallman Unit 3 without a permit, violated Rule 951 of Chapter 3 as well as Section 12(b) of the Act. However, certain facts mitigate assessment of a high penalty. The Board recognizes that Springfield failed to obtain a permit due to a good faith misunderstanding of the permit requirement. Also, there has been no actual injury to the public as yet other than the injury inherent in a violation of the permit requirement. Therefore, the Board accepts the stipulated penalty of \$550.00 for the violations found herein. The Board furthermore accepts the Stipulation submitted by the parties as an adequate plan of compliance with Illinois Water Quality Standards and regulations.

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

ORDER

It is the Order of the Pollution Control Board that:

1. The City of Springfield is found to have violated Rule 951 of Chapter 3 and Section 12(b) of the Act.
2. For said violations, the City shall pay within 35 days a penalty of \$550.00. Payment shall be made by certified check or money order to:

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

3. The City shall comply with all the Terms of Settlement in the Stipulation submitted by the parties on December 18, 1975.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 8th day of April, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board