

ILLINOIS POLLUTION CONTROL BOARD
June 12, 1980

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 79-5
)
CROSSROADS U.S.A., Inc.,)
an Iowa Corporation;)
BROWNE BARR; CHARLES JORDAN;)
DALLAS CRANDALL and)
LARRY W. MC CASLAND,)
)
Respondents.)

MR. WILLIAM E. BLAKNEY, ASSISTANT ATTORNEY GENERAL, APPEARED FOR
COMPLAINANT;
MR. JOHN L. PARKER, ESQUIRE, APPEARED FOR RESPONDENTS.

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

This complaint, as amended February 20, 1979, alleges the operation and/or management of a "semi-public" wastewater treatment facility at Routes 30 and 55 in Plainfield, Will County, in violation of the Illinois Environmental Protection Act (Act) and the Board's Water Pollution Control Rules and Regulations (Water Regulations). Hearing was held on February 19, 1980 in Joliet, at which Respondents presented no evidence. Both parties submitted post-hearing briefs.

Both parties issued and answered interrogatories and Respondents answered Complainant Agency's request for admissions of fact. None of these discovery vehicles produced facts material to the issues of liability presented by the complaint.

At the hearing, the Agency produced two employee-witnesses. One testified that no reports of contaminant excursions had been received from Respondents during the period October, 1977 through November, 1978 (R.38-9). He further stated that Respondent Crossroads had never recorded discharge levels for the contaminant fecal coliform (R.39-40).

The other Agency witness testified that on March 1, 1978 he inspected the facility with Respondent Crandall and sampled the effluent. He noted that the facility was not then operating and that none of the machinery was working (R.53-55). Although the witness did not sample the outfall from the discharge (R.67), he

did sample the contents of a chlorine contact tank (R.53). These samples were sent the next morning to the Agency's laboratory, and the results were received on March 17, 1978 (R.59,62-3,66).

No other evidence at hearing was given except for submittal of the NPDES permit concerned (Ex.1), copies of the Discharge Monitoring Reports for January, 1978 through January, 1979 (Ex.2), and the laboratory analyses of the samples (Ex.3). The laboratory analyses were admitted by the hearing officer under Procedural Rule 320(b) when they were used solely to refresh the witness' recollection as to when the Agency received the results of the analyses (R.58-76). Counsel for Respondents quite properly objected to the admission of these analyses as Exhibit 3; the hearing officer's ruling is overruled.

Counsel for Respondents moved at the close of the hearing to dismiss the complaint for failure of proof of a prima facie case against Respondents (R.76). The Board hereby answers the motion as follows.

Count I. It is alleged that discharges of both BOD₅ and Total Suspended Solids exceeded the amounts permitted by the NPDES permit from October, 1977 through June, 1978 and September, 1978 through November, 1978, and that this constitutes a violation of the permit, of Water Regulation 901, and of §§12(a) and (f) of the Act.

Liability as to all of these depends on whether Respondents violated the relevant discharge limitations contained in the NPDES permit. Although these limitations are in evidence before the Board (4 mg/l BOD₅, 5 mg/l TSS, and 200 per 100 milliliter fecal coliform), the only evidence before the Board to compare with the limitations contained in the permit is that contained in the Discharge Monitoring Reports (Ex.2). These reports show discharge levels as follows:

	BOD ₅ (mg/l)	TSS (mg/l)
October, 1977	18.0	11.0
November, 1977	18.0	27.0
December, 1977	15.0	18.0
January, 1978	14.5	18.0
February, 1978	19.0	27.0
March, 1978	42.0	29.0
April, 1978	39.0	42.0
May, 1978	29.0	32.0
June, 1978	14.0	19.0
September, 1978	18.0	24.0
October, 1978	11.0	22.0
November, 1978	19.0	27.0

None of the reports contained data on concentrations of fecal coliform.

Crossroads' discharges of both BOD₅ and TSS during the months covered by the Discharge Monitoring Reports are in excess of what its permit allows. The Board thus finds Crossroads in violation of Water Regulation 901, which declares discharges not complying with NPDES permit conditions to be unlawful. The discharges are from a "point source" (the "semi-public" wastewater treatment facility) and are into a water of the State (Mink Creek, then to Lily Cache Creek, then to the DuPage River).

A violation of Water Regulation 901 raises the issues of violations of §§12(a) and (f) of the Act. The Board finds that Crossroads' discharges of contaminants BOD₅ and TSS so as to violate Water Regulation 901 are sufficient to impose liability for violations of §§12(a) and (f) of the Act. Thus, as to Count I, the Board finds Crossroads in violation of Water Regulation 901 and §§12(a) and (f) of the Act.

As to the liability of the individual respondents, there is no evidence that any of them caused or allowed discharges in violation of the permit conditions. Although Respondents have admitted that certain of them held certain positions of authority, these admissions are insufficient as tending to prove that these individuals in fact caused or allowed such discharges. The Board therefore finds no liability of the individual respondents for the violations alleged in Count I.

Count II. It is alleged that on March 1, 1978 Respondent operated the facility so as to cause discharges of BOD₅, TSS and oil in excess of that required by law under Water Regulations 401(c), 404(f), and 408(a).

Since there are no facts in evidence as to whether Respondents actually operated the facility on the date of March 1, 1978, no finding of causation or liability can be made. The Board finds no facts supporting the violations alleged regarding either the corporate respondent or any of the individual respondents.

Count III. It is alleged that BOD₅ and TSS excursions beyond the applicable discharge limitations were not reported to the Agency within five days as the permit requires.

The Discharge Monitoring Reports are sufficient to prove that from the time the monitoring results were obtained for each of the months previously cited, Crossroads knew that it did not comply with the limitations specified in the permit. As the Agency witness testified that it had never received the written notice as required by the permit (R.389), the Board finds that Crossroads did not make the reporting as required by the permit. The Board therefore finds Respondent Crossroads in violation of Water Regulation 901 and of §§12(a) and (f) of the Act. Because there is no evidence that any of the individual respondents either knew of the excursions or were responsible for not

reporting them, the Board finds that they are not liable for the violations alleged in Count III.

Count IV. The Agency alleges that fecal coliform concentrations were to be monitored and reported under the requirements of the permit and were not contained in Discharge Monitoring Reports for the months of October, 1977 through June, 1978.

The relevant Discharge Monitoring Reports show no data for fecal coliform. The Board finds that Crossroads did not report on the Discharge Monitoring Reports for the months of October, 1977 through June, 1978 concentrations of fecal coliform, and that it was required to do so under the conditions of its permit. The Board therefore finds Crossroads in violation of Water Regulation 901 and of §§12(a) and (f) of the Act. There is no evidence that any of the individual respondents caused or allowed this permit violation; therefore, the Board finds them not liable for the violations alleged in Count IV.

Count V. The allegation is that the permit required that the average quantities of BOD₅ and TSS in the effluent be included in the Discharge Monitoring Reports and were not reported for the month of April, 1978.

Although Exhibit 2 purportedly includes the Discharge Monitoring Report for April, 1978 (the report stamped with the Agency's receipt of June 8, 1978), the relevant columns read "0." Because it is likely that the lack of a reported number was merely inadvertent, the Board finds none of the respondents in violation of the allegations contained in Count V.

Count VI. This final count alleges that Crossroads' BOD₅ effluent limitations exceeded that established by Water Regulation 404(f) (Paragraphs (d) and (c) of that regulation do not apply).

Because there is no evidence that Crossroads' dilution ratio is less than one to one, or that violations occurred on or after December 31, 1978, the Board finds no violations of the allegations of Count VI.

PENALTY

The Board finds that the imposition of a civil penalty is necessary to aid in the enforcement of the Act and the Board's Water Pollution Control Regulations promulgated pursuant thereto. The Board has, to the extent possible, considered the factors contained in §33(c) of the Act in determining a reasonable penalty. Although the maximum penalty allowable under §42 is \$10,000 per day of violation, and the number of days for purposes of Count III alone could conceivably be calculated from five days after receipt of the October, 1977 monitoring results up to the

date of the filing of this complaint, such sum would not aid in enforcing the Act. However, in view of the consistency of these violations during the periods alleged, the degree of the excursions beyond that allowed by the permit, and the absence of evidence by Respondents at hearing, the Board finds that a penalty of \$1,500 is a reasonable amount and is one which will protect the vitality of the intent of the Act and Board regulations promulgated thereunder.

The Board notes Respondents' argument that the Seventh Circuit Court of Appeals case of Citizens for a Better Environment v. USEPA, et al., 576 F.2d 720 (1979) prevents the Board's taking jurisdiction of NPDES permit matters. The Board is not aware, however, of specific disapproval of Illinois' authority to administer the NPDES program and has therefore upheld jurisdiction of the instant complaint.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:


1. Respondent Crossroads U.S.A., Inc. is in violation of Rule 901 of the Board's Water Pollution Control Rules and Regulations and of Sections 12(a) and 12(f) of the Illinois Environmental Protection Act pursuant to Counts I, III, and IV of the Complaint.
2. Respondent Crossroads U.S.A., Inc. shall pay a civil penalty of \$1,500 within 35 days by certified check or money order to:
Environmental Services Division,
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706
3. Respondent Crossroads U.S.A., Inc. shall cease and desist further violations of the Illinois Environmental Protection Act, of the Illinois Pollution Control Board rules and regulations, and of the terms and conditions of its NPDES permit.
4. Respondents Browne Barr, Charles Jordan, Dallas Crandall, and Larry W. McCasland are found not to be in violation of the Act, the NPDES permit terms and conditions, or the Board's Water Pollution Control Rules and Regulations pursuant to all Counts of the Complaint.
5. Respondent Crossroads U.S.A., Inc. is found not to be in violation of the Act, the NPDES permit terms and conditions, or the Board's Water Pollution Control

Rules and Regulations pursuant to Counts II, V, and VI.

IT IS SO ORDERED.

Mr. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 12th day of June, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board