

"Until after the City files its program for policing the discharge of unnecessary pollutants into Boneyard Creek, there can be no appropriate determination whether or not or to what extent the responsibility rests with the City or other parties or any basis to determine if, when, how or by whom the Boneyard may be made pure."

The City of Champaign on March 15, 1972 reported the following as probable causes of pollution: the University of Illinois, Abbott Power Plant; illegal private sanitary sewer connections to City storm sewer lines; breaks in the sanitary sewer mains of either the City or the Urbana-Champaign Sanitary District; dumping or spillage of waste products in such a manner that they either directly or indirectly enter the City's storm sewer system or Boneyard Creek; urban runoff consisting of street refuse carried to storm sewers by precipitation and septic liquids remaining in catch basins.

The discharge from Abbott Power Plant has been halted, thus it no longer presents a pollution danger to Boneyard Creek. The City has taken steps to discontinue the other sources of pollution when it has found violations of applicable ordinances. Letters are sent to offenders by the City and if no response is forthcoming the case is sent to the City attorney. According to the City, voluntary compliance has been excellent. In only two cases has the City had to resort to the City attorney and in those two cases the offenders complied when contacted by the City attorney.

The City's report contains methods they used to investigate pollution problems. Dumping and spillage violations are discovered by visual inspections or as a result of citizen complaints. The City does not indicate the existence of a program to prevent such discharges. Respondent alleges that violations due to sanitary sewer leakage and direct private sanitary sewer connections are investigated by a continual sampling program of the Creek and the tributary storm sewer system. Twenty-four hour composite samples are taken but the City did not disclose how often it performs these tests. When the City finds a relatively high COD reading upstream samples are taken to determine the exact spot where the pollutional discharges enter the Creek. When it is determined by change in the COD level that the pollutant is entering the storm sewer between two manholes, sewer dye is placed in any adjacent sanitary sewer, and if it is observed in the storm sewer it is apparent that the sanitary sewer is leaking into the storm sewer. If the results of this dyeing are negative, it is then necessary to start placing dye in the sanitary facilities of each property adjacent to the storm sewer which is receiving pollution to

determine if one of the properties has its sanitary facilities connected directly to the storm sewer system. This often requires all buildings on both sides of the street for a City block to be dyed.

We have previously found that the City of Champaign violated Section 12(a) of the Environmental Protection Act in that the City allowed the discharge of contaminants so as to cause or tend to cause water pollution in Illinois. The record clearly proves that water pollution was caused on August 7, 1970 and September 21, 1970 but in addition thereto the City has stipulated that:

"The Boneyard has, for more than forty years, been a polluted drainage ditch or water source unsuited for domestic, commercial, agricultural or recreational uses or to livestock, wild animals, birds, fish or other aquatic life....A substantial portion of the polluted waters discharged into the Boneyard flow through various outlets of storm sewers owned by the City of Champaign."

The City contends, however, that it did not generate the waste but only transported it. The Agency has agreed that:

"In no instance has the City of Champaign originated, authorized, acquiesced in, licensed, or ignored any pollutional discharges into the Boneyard or failed to take any positive action to prevent any continued pollutional discharge of which it had knowledge or which has been called to its attention." (R.614)

Our determination that the City of Champaign had allowed the pollutional discharges was based upon a finding that the City had failed to seek out the sources of pollution with a positive action program. At page 19 of our September 16, 1971 Opinion we said:

"However, the City's confession that the Boneyard is polluted as a result of its sewers creates an obligation to institute a program of policing and enforcement beyond any that was described in the record, to prevent further pollution from the sewers to the extent practicable."

The report filed in March 1972 indicates that the City has embarked upon such a program of positive action to seek out pollution sources and to reduce, if not eliminate, the pollutional discharges to the Boneyard. It is apparent from the report that positive action can accomplish some abatement of pollution. The

City as owner of the storm sewers transporting the polluted waters is obligated to take affirmative action beyond that passive stance which it had apparently taken for some forty years. We will not impose a monetary penalty upon the City of Champaign for its failure to seek out pollutional discharges in the past. However, we will require that those steps which have recently been taken be continued. In addition, the Agency states that "frequent tests of storm sewer discharges, particularly during dry weather would probably facilitate discovery of illegal storm sewer connections. Once violations have been uncovered, notified and corrected detailed follow-up studies should be conducted to insure that the problems have been corrected." We believe it is reasonable to add such testing and follow-up studies to the City program.

We realize that even with a positive action program it might take some time to clean up the Boneyard. The effects of 40 years of "passive" pollution control cannot be changed overnight. However, continued application of the Champaign program could in time bring much improvement in the quality of the Boneyard. We will expect the Environmental Protection Agency to offer such technical assistance as it can in this effort. The Agency also has its responsibility, but the task of policing, investigating pollution sources, following-up on abatement action is best performed by the owner of the storm sewer system, the City of Champaign.

ORDER

It is the Order of the Board that:

- a) The City of Champaign continue its program of investigating pollution of the Boneyard Creek and abating pollution sources. The program shall include tests of storm sewer discharges, particularly during dry weather and such follow-up studies as may be necessary to determine that pollution abatement action has actually been taken.
- b) For the next three years, the City of Champaign shall file progress reports quarterly with the Environmental Protection Agency which reports shall contain results of samples to be taken from Boneyard Creek at representative locations and from the storm sewers and tributaries to the Creek. Test data for each sample shall include fecal coliform, ammonia, biological oxygen demand, chemical oxygen demand, pH and dissolved oxygen levels performed according to standard methods.

- c) The quarterly progress report shall also contain detailed accounts of improvements to the tributary storm sewers and possible leaking sanitary sewers and reports of follow-up investigations of former violators. The City shall also continue to send the Agency copies of correspondence with violators.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 20th day of December, 1973 by a vote of 5 to 0.

Christan L. Moffett