

ILLINOIS POLLUTION CONTROL BOARD

March 14, 1974

ENVIRONMENTAL PROTECTION AGENCY,            )  
  Complainant,                    )  
  )  
  v.    )  
  )        PCB 73-344  
THE HOWELL COMPANY, a division of            )  
Interlake, Inc., a Delaware corporation)        )  
qualified to do business in Illinois,        )  
  Respondent.                            )

John Slattery, attorney for Environmental Protection Agency.  
W. Thursby, attorney for Respondents.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (EPA) filed a Complaint against Respondent Howell on August 16, 1973. Respondent owns and operates a furniture manufacturing plant at 410 South First Street, Saint Charles, Illinois. The furniture constructed by Howell contains metal parts which must be either painted or chrome plated. Pieces to be painted are first cleaned at a phosphatizing cleaning line. The chrome plated parts require cleaning, coating, and rinsing at a nickel plating line and a chrome plating line. Rinse water from the phosphatizing, nickel, and chrome lines is discharged into the Fox River.

The Complaint alleged that Howell discharged effluent into the Fox River from its manufacturing plant in violation of Section 12(a) of the Environmental Protection Act (Act), the Rules and Regulations of the Illinois Sanitary Water Board (SWB-11) and the provisions of Chapter Three: Water Pollution Regulations of Illinois (Chapter Three). Specifically the Complaint charged that:

1. From April 15, 1971, until March 7, 1972, Respondent failed to provide for substantially complete removal of settleable solids in violation of Rule 1.08 (10)(b)(1) and 1.03(a) of SWB-11. Rule 403 of Chapter Three was violated in this manner from March 7, 1972, until August 16, 1973.

2. From April 15, 1971, until March 7, 1972, Respondent failed to provide for removal of color, odor, and turbidity to below obvious levels in violation of Rule 1.08 (10)(b)(3) and 1.03(c) of SWB-11. Rule 403 of Chapter Three was violated in the same way from March 7, 1972, until August 16, 1973.

3. From April 15, 1971, until August 16, 1973, Respondent failed to construct additional or improved treatment works for

removal of metals as required by Rule 1.08(15) of SWB-11, continued effective by Section 49(c) of the Act.

4. From April 15, 1971, until April 16, 1972, Respondent failed to remove discharging substances toxic or harmful to aquatic life in violation of Rule 1.03(d) of SWB-11. Rule 203(a) of Chapter Three was violated in identical fashion from April 16, 1972, until August 16, 1973.

5. From December 31, 1972, until August 16, 1973, Respondent operated its furniture manufacturing plant, a wastewater source, without an Operating Permit in violation of Rule 903 of Chapter Three.

Respondent's answer to the Complaint was filed on October 17, 1973. Respondent denied all violations of the Act, SWB-11, and Chapter Three. Howell further moved that the action be dismissed and counterclaimed, seeking to have the EPA issue construction and operating permits. EPA filed a reply on October 22 and realleged the violations set out in its original Complaint and moved to strike Respondent's counterclaim in that there is neither a provision in the Board's Procedural Rules for filing a counterclaim nor had Respondent exhausted its administrative remedies in appealing from a permit denial. Howell's reply to the Complainant's motion was filed on October 30, 1973, and stated that Rule 309 of the Procedural Rules must be read to presume the right to counterclaim.

A December 6, 1973, hearing took place in Saint Charles, Illinois, and a Stipulation and Proposal For Settlement was made part of the record. Paragraph 4 of the Stipulation indicated that on November 1, 1973, Howell received from EPA a permit to construct, own and operate a water pollution control facility to provide treatment for process water to the Fox River. "It is expected that said facilities shall be constructed and operational by December 31, 1973, and that discharges from said facility and the plant will be in compliance with the Board's Water Pollution Regulations, including those provisions which become applicable January 1, 1974." Paragraph 5 reviewed the nature of the alleged violations and the answers and motions filed by the parties. Paragraph 6 stated in part:

"6. In the course of the discussions between EPA and Howell since the commencement of this proceeding, Howell has determined that EPA can establish a prima facie (sic) case of the alleged violation set forth in paragraph 5" of the Stipulation. "Howell has now obtained a construction and operating permit for additional control facilities as set forth in paragraph 4" of the Stipulation. . . ."Accordingly, the parties propose the settlement set forth in the following paragraph, said proposed settlement having been agreed by EPA and Howell to be conditioned upon and effective only on the entry of an Order approving this Stipulation and Proposal for Settlement as well as the proposed settlement in all respects by the Pollution Control Board. EPA and Howell have further agreed that if such an Order is not entered, this document

shall be inoperative in all respects and any and all statements of any party or person contained herein shall be null and void, of no effect and shall not be used or offered in evidence in this or any other action or proceeding."

The Board filed an interim order for additional information on January 17, 1974. We requested more information in that order, because Respondent neither admitted for the purpose of Settlement any violation nor were sufficient facts made available to enable the Board to make a determination and decide whether the imposition of a \$10,000 penalty was reasonable. The parties filed a Motion For Reconsideration on January 31, 1974, but orally agreed during the February 7 Board meeting to supply additional data. Supplementary information -- totaling approximately 150 pages of pictures, charts, and data sheets -- was submitted to the Board on February 11, 1974, by EPA "with the consent and approval of the Respondent." The information indicates that the violations have been both numerous and long-standing. The following sampling of data establishes the violations set out in the Complaint:

1. Background Information. The information submitted on February 11, 1974, contained the following description of the Howell Company:

"The Howell Company, a division of Interlake Steel Corporation, is located on the west bank of the Fox River in Saint Charles, Illinois, a city with a population of 12,928. The company manufactures a well known line of kitchen chairs, tables, etc.

The company has a history of unsatisfactory effluent discharges to the Fox River since 1956. Chrome and nickel wastes from two separate plating lines are discharged to a large manhole via two separate lines. The manhole is located in the driveway behind the plant. The combined flows from these two lines is subsequently discharged to the Fox River. The actual point of discharge to the river is enclosed by a structure that was previously used for a water intake years ago. Since the effluent is enclosed, it is not possible to observe the actual point where the waste water enters the river. Extremely high nickel concentrations have been detected entering the manhole behind the plant.

Chrome and nickel recovery facilities were installed in 1967. A permit to install and operate these facilities was not required by the Sanitary Water Board at that time. These units failed to lower the heavy metals concentration in the effluent below the standards. It is apparent that the recovery facilities are not capable of producing a satisfactory effluent on a continuous basis. Samples collected from the plant effluent manhole show a highly variable concentration of heavy metals from day to day. The discharge of plating wastes to the Fox River continues to the date of this referral. Total suspended solids in excess of 15 mg/l are also discharged to the stream.

Environmental Protection Agency Biologist William Tucker surveyed the river on July 16, 1971. His report classifies the aquatic environment upstream from the Howell Company effluent as

being balanced. The downstream environment was found to be polluted. No aquatic organisms were observed.

Stephen E. Baldwin  
Sanitary Inspector

There is much evidence in the information submitted on February 11, 1974, of violations of the nickel and chromium (hexavalent) standards as found in TR 20-22, incorporated in SWB-11 Rule 1.08(10)(b)(4). The Complaint did not allege any violations of Rule 1.08(10)(b)(4). In deciding upon the reasonableness of the penalty, the Board has excluded consideration of the nickel and chromium data. Respondent stated in paragraph 6 of its Stipulation and Proposal For Settlement (already set out above) that Complainant can establish a prima facie case of violations of SWB-11. We interpret that statement to apply only to allegations made in the Complaint.

In paragraph 7 of the Settlement Proposal the parties state: ". . . Said Order shall also provide that this proceeding shall stand dismissed with prejudice . . . to any and all actual or alleged violations . . ." We understand the parties to mean all allegations actually proven. Possible nickel and chromium (hexavalent) violations not contained in the Complaint are not considered. Our final order only covers those allegations contained in the Complaint. An enforcement action alleging violations of Rule 1.08(10)(b)(4) of SWB-11 is not precluded by this cause.

2. File Resume. The data submitted February 11, 1974, contained a file resume of correspondence between the state agency and Howell from 1956 to 1971. The following 1965 to 1968 information was excerpted from that document:

<u>December 16, 1965</u>	S.W.B.to Howell Co.	Disclosed limits on toxic material (10 or more items, including chrome and nickel) and heavy metals discharged to river.
<u>February 14, 1966</u>	S.W.B.to Howell Co.	Effluent not in compliance. Plans, specifications and detailed plant layout for chrome recovery unit must be submitted. Immediate action is needed.
<u>October 9, 1967</u>	S.W.B.to Howell Co.	Effluent not in compliance. Effluent must be satisfactory on a continuous basis. All operational problems must be corrected by July 1, 1968.

3. Memorandum of Apparent Violations. The data submitted February 11, 1974, outlined apparent violations observed at Respondent's facilities after July 1, 1970. The evidence establishes violations of Section 12(a) of the Act; Rules 1.03(a) (c) and (d) of SWB-11; Rules 1.08(10)(b)(1) and (3) of SWB-11; and Rule 1.08(15) of SWB-11. The evidence also establishes violations of Rules 203(a) and 403 of Chapter Three. The data do not include any information regarding Rule 903 of Chapter Three. We have excluded data regarding violation of Rule 1.08(10)(b)(4). The data show the following "Explanation of Violations:

Environmental Protection Act Section 12(a)	Company allows discharge of contaminants into environment causing water pollution. Toxic materials in plant effluent results in sterile environment downstream from effluent. Ex. F.
S.W.B. - 11, Rule 1.03(a): (Bottom deposits)	<u>Ex. G August 16, 1971.</u> Greyish white sediment on stream bed. Brown flocculant material (120 mg/l of suspended solids) being discharged to river. <u>Ex. H December 1, 1971</u> White colored bottom deposits observed in stream bed downstream from plant effluent. <u>January 12, 1972</u> A greyish-white colored material was observed on the stream bed adjacent to (downstream from) the enclosed discharge structure. This material is attributable to the company's heating plant boiler blowdown.
S.W.B. - 11, Rule 1.03(c): (Color, odor)	<u>Ex. F July 16, 1971</u> Chemical (septic) odors were observed in river by Biologist William Tucker. <u>Ex. G August 16, 1971</u> Stream discolored by turbid brown flocculant material in plant effluent. Stream discolored by milky white material in plant effluent. <u>January 12, 1972</u> A greyish-white colored material was observed on the stream bed.
S.W.B. - 11, Rule 1.03(d): (Toxic substances)	<u>Ex. E July 28, 1971</u> Toxic material attributable to plant effluent was detected in stream. Aquatic environment is sterile. See Biological Survey (Ex.F).

Ex. G August 16, 1971

Toxic material attributable to plant effluent was detected in stream. Aquatic environment is sterile. See Biological Survey (Ex.F).

Ex. H December 1, 1971

Toxic material attributable to plant effluent was detected in stream. Aquatic environment is sterile. See Biological Survey (Ex.F).

January 12, 1972

Greyish-white colored material in stream bed could be toxic or harmful to human, animal, plant or aquatic life. Biological survey shows aquatic environment is sterile downstream from company's effluents.

S.W.B.-11, Rule 1.08(10)(b)(1):  
(Removal of settleable solids)

Ex. B July 6, 1971

Suspended solids of 219 mg/l were detected in the plant effluent.

Ex. E July 28, 1971

Suspended solids of 45 mg/l in plant effluent.

Ex. G August 16, 1971

Suspended solids of 65 mg/l in plant effluent.

Ex. H December 1, 1971

Suspended solids of 158 mg/l in plant effluent.

S.W.B.-11, Rule 1.08(10)(b)(3):  
(Removal of color, odor,  
turbidity)

Ex. B July 6, 1971

Effluent was a transparent green color.

Ex. E July 28, 1971

Effluent was a yellow color.

Ex. E July 28, 1971

Effluent from 24" pipe was a cloudy color.

Ex. G August 16, 1971

Effluent from 24" pipe was milky white color. A chemical odor was noticed.

Ex. H December 1, 1971

Effluent from 24" pipe was milky white, turbid color. A chemical odor was noticed.

January 12, 1972

Effluent from south tile entering sampling manhole (sampling point B-1) was a slight green color. Effluent from 24" concrete dis-

charge pipe to river (sampling point B-4) was a slight milky white turbid color.

S.W.B. - 11, Rule 1.08(15):  
(Construction of improved treatment works in accordance with timetable)

Company has failed to provide additional metals removal by January 1969 in accordance with the approved schedule for completing construction on Page 14 of S.W.B. - 11.

Water Pollution Regulations,  
Rule 403 (Effluent standards)

September 27, 1972

Heavy layer of floating oil was noticed in sampling manhole.

October 16, 1972

Minor amount of floating oil was noticed in sampling manhole.

October 30, 1972

Minor amount of floating oil was noticed in sampling manhole.

November 30, 1972

Effluent from 24" concrete discharge line (sampling point B-4) was a slightly milky white color. A very slight chemical odor was noticed. The effluent from the south tile (sampling point B-1) entering the sampling manhole was a very turbid milky white color.

December 18, 1972

Effluent from 24" concrete discharge line (sampling point B-4) was a slightly milky white color. A slight chemical odor was noticed.

February 7, 1973

Effluent from 24" concrete discharge line (sampling point B-4) was a slight milky white color. A slight chemical odor was noticed.

Water Pollution Regulations,  
Rule 203(a) (Stream standards)

February 7, 1973

Effluent from 24" concrete discharge line (sampling point B-4) was a slight milky white color which, in turn, caused a discoloration in the river."

We hold that Respondent has violated Section 12(a) of the Act. Rules 1.03(a), (c), and (d) of SWB-11 have also been contravened. Rules 1.08(10)(b)(1) and (3) have been broken by Respondent. Respondent has breached 1.08(15). Rules 203(a) and 403 of Chapter Three have been violated by the Respondent. Howell is also guilty of breaking Rule 903 of Chapter Three by admitting in paragraph 6 of the Stipulation and Proposal For Settlement that a prima facie case of violation of that Rule had been established. Since

Respondent submitted no evidence to rebut the presumption of a Rule 903 violation, we hold that Respondent violated this Rule.

We accept the Settlement agreed to between the parties. Payment of a \$10,000 penalty and compliance within 30 days will protect the public interest as to violations established from the Complaint.

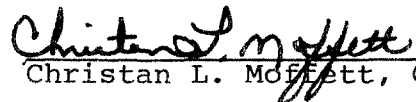
This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Howell shall, within 35 days of the adoption of this Order, pay a penalty of \$10,000 for its violation of the Act and Rules set out in the Complaint. Payment shall be by certified check or money order, payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14<sup>th</sup> day of March, 1974, by a vote of 5 to 0.

  
Christan L. Moffett, Clerk