

ILLINOIS POLLUTION CONTROL BOARD
June 7, 1973

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 72-109
)	
ALLIED CHEMICAL COMPANY,)	
)	
Respondent.)	

Mr. Jack W. Leskera, Special Assistant Attorney General, on behalf of Complainant;
Mr. Edward G. Maag on behalf of Respondent.

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

This enforcement action was filed with the Board on March 23, 1972, alleging that Allied Chemical Corporation (Allied) operated its facility in St. Clair County near Fairmont City, Illinois, so as to cause water pollution in violation of Section 12(a) of the Environmental Protection Act (Act); so as to render the waters of the State unfree from objectionable sludge deposits, from unsightly or deleterious floating materials, from color, odor or other nuisance producing conditions, and from substances harmful to human, plant or aquatic life, in violation of Rules 1.03 (a), (b), (c) and (d) of SWB-14 of the Illinois Sanitary Water Board (SWB-14), remaining in effect pursuant to Section 49(c) of the Act; and so as to cause the pH of the receiving water to be below 5 and the temperatures of the water to be excessive in violation of Rules 1.05(b) and (c) of SWB-14.

Allied's Fairmont City operation produces aluminum sulfate, sodium aluminum sulfate, and sulfuric acid. Allied's aluminum sulfate and sodium aluminum sulfate operations are the largest in the United States. The sulfuric acid plant was constructed to provide the Shell Oil Company refinery in Wood River, Illinois, with sulfuric acid, and it was the changing business relationship between Allied and Shell that Allied claims is in part responsible for its failure to comply with environmental regulations.

Approximately three years ago, Allied and Shell started to renegotiate their contract whereby Allied provided Shell with sulfuric acid (R. 128-129). Allied determined that it could comply with environmental regulations if it would improve in-plant housekeeping procedures (R. 129), but Shell decided to have a sulfuric acid plant built at its Wood River facility, and so the contractual relationship between Allied and Shell would terminate at the end of the existing five year contract. After the business relationship with Shell was clarified, Allied decided that it could be economically viable even if it did in fact close down its sulfuric acid plant (R. 132-133), presumably in May or June of 1973 (R. 267). Allied applied for a permit for the aluminum sulfate and sodium aluminum sulfate operations on August 14, 1972, (Respondent Exhibit 2), and its permit application was approved by the Agency (R. 139).

Allied concedes that there was no problem with the necessary technology to abate pollutional discharges from its operations (R. 272); however, Allied claims that it could not commit itself to the necessary upgrading until its deliberations with Shell were concluded. By letter dated February 12, 1971, (Complainant's Ex. C), Allied stated that it would submit the necessary permit information to the Agency by April of 1971, but in fact made no further response to the Agency until a letter of March, 1972 to the Agency (Respondent's Exhibit 1), which letter reiterated Allied's problems with Shell. This letter repeated the promise of February, 1971 that there would be plans forthcoming for control of Allied operations.

At the hearing on November 17, 1972, Allied stated that all necessary upgrading would be completed by June 1, 1973 (R. 267), and that after completion of all of the abatement equipment, there would be no effluent discharge to Rose Creek (R. 359). At the date of hearing, the effluent had a pH of approximately 5 (R. 360), and Allied in fact admitted that it did discharge an acidic effluent (R. 365-366).

Rose Creek, otherwise known as the Pennsylvania Ditch, is the body of water into which Allied discharges. Rose Creek is a man-made body of water created more than 60 years ago. Photographs taken by Allied show vegetation surrounding the banks of Rose Creek (Respondent Ex. 12). This same exhibit shows the orange color of the water in Rose Creek. Rose Creek flows from the Allied area until it adjoins an additional artificial creek which together flow to the Cahokia canal. There are other discharges into Rose Creek, the source of which is unclear, although they are either storm water drains from the City of Fairmont, possibly some industrial discharges, and perhaps as many as 17 natural drainage points, all of which may contribute to the condition of Rose Creek.

A brief summary of the inspection reports admitted into evidence indicates the miserable quality of Allied's discharges. On 13 different dates for which inspections were made, the pH of Rose Creek ranged from 2.2 to 6.9. Sulfates were as high as 12,000 mg/l on July 21, 1972, iron was as high as 100 mg/l on July 21, 1972, and total solids were as high as 6400 mg/l on May 2, 1971 (Complainant's Ex. A). At all times the discharges were milky in color and at all times a white to orange sludge was noted along the banks of Rose Creek downstream of the Allied effluent. At no time was any in-stream biota observed.

A summary of the inspections made by the Agency investigators indicates that the pH provisions of Rule 1.05(b) of SWB-14 were violated on the following dates: October 26, 1970, April 28, 1971, May 6, 1971, May 25, 1971, May 28, 1971, June 29, 1971, August 4, 1971, December 8, 1971 (Complainant's Group Exhibit A).

We find no violations of Rule 1.05(c) of SWB-14. The evidence relating to water temperature is inadequate to show whether the temperature elevations above 90° which in October of 1971 and the temperature elevations in excess of 60° in December of 1971 are attributable to the discharges from Allied. In fact, the record does not show whether the measurements were of the effluent or the creek, or if in the creek, where. In the absence of such affirmative proof by the complainant, the Board cannot properly find such violations.

Violations of Rule 1.03 (a), (b), (c), and (d) are easily demonstrated as having occurred on the following dates: October 26, 1970, November 24, 1970, May 6, 1971, May 25, 1971, May 28, 1971, June 28, 1971, June 29, 1971, August 4, 1971, October 19, 1971, October 27, 1971, December 8, 1971 (Complainant's Group Exhibit A).

On all of these dates, the investigator specifically noted that there were whitish sludge deposits around the Allied discharge, which continued downstream, that Allied's discharge consistently contained large amounts of noticeable and objectionable floating materials, that the discharges were not clear, but were consistently milky white or orange in color, and which contained contaminants in such concentrations so as to prohibit any in-stream biota.

It should be noted that the reports for June 29, 1971 and August 4, 1971 were comprehensive surveys going far downstream of Allied's discharges. On these dates, the investigator noted that he could see a marked difference in the quality of the water in Rose Creek and the quality of the water in the Cahokia Ditch, into which Rose Creek flowed. This difference is graphically shown in the photographs introduced by Respondent as Respondent's Exhibit 12, photograph 22.

That these discharges did more than pollute the water is demonstrated by the testimony of the Illinois Highway Department (R. 60 et seq). In sum, the testimony introduced that Allied's discharges caused the disintegration of a culvert downstream of Allied.

From the date of the first inspection, October 26, 1970, Respondent has clearly and continuously, because of its highly contaminated discharge into Rose Creek, caused water pollution in violation of Section 12(a) of the Act. Rose Creek does not support aquatic life (Complainant's Exhibit A-15) and as long as Allied's discharges continued as highly contaminated, Rose Creek could not support any meaningful aquatic life. Allied, in its brief and argument, states that Rose Creek "was never a natural water course, nor did it ever support aquatic life as a naturally occurring stream any more than a gutter along a city street can be characterized as a stream capable of supporting aquatic life". Artificial waters are defined as waters of the state in Section 3(a) of the Environmental Protection Act, and accordingly, Rose Creek is entitled to the protection provided by the Act and the regulations. Protected waters are not to be considered open sewers.

We are unable to find violations for the inspection made on July 21, 1972, because of a defect of pleading. SWB-14 had been repealed by the Board prior to that date, and Chapter 3 of the Board's regulations had been adopted. Accordingly, we are precluded from finding any violations of SWB-14 to have occurred on that date, and because the complaint was not amended to include violations of Chapter 3, we cannot find those violations. The inspection of July 21, 1972 does indicate that the highly contaminating discharges from Allied had not improved.

Allied, in mitigation, stated that it would close down its sulfuric acid plant and that the controls for the remainder of its facility would be operational, all to occur by June 1, 1973. Although several years of inactivity are inexcusable, at least Allied apparently, at long last, recognized its responsibility to protect the environment of the State in which it does business. We trust that Allied will adhere to that program and schedule.

Allied, six months after the conclusion of hearings in this cause, filed a motion to reopen the record to submit subsequently acquired information. To the extent that this motion would require any departure by Allied from its proposed compliance program, and to the further extent which the relief requested in this motion would cause any departure from any of the provisions of the Act or regulations, the appropriate avenue for Allied to take would be the prompt filing of a

petition for variance. In that way, the Board could make an informed decision as to the validity of the allegations in Allied's motion. The motion of Allied to reopen the record is therefore denied.

For the many serious and continuing violations of the Act and SWB-14, we are imposing a money penalty of \$7,500.

IT IS THE ORDER of the Pollution Control Board:

1. For the violations of Section 12(a) of the Act and SWB-14, Allied shall pay to the State of Illinois a money penalty of \$7,500. Payment shall be made by certified check or money order within 35 days of the entry of this Order, and sent by certified mail to: Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
2. Within 30 days from the date hereof, Respondent shall submit to the Agency, a program setting forth the steps to be taken by Respondent to bring its operation into full compliance within 90 days from the date hereof, with all relevant regulations and statutory provisions with respect to water pollution. Within 15 days from the date hereof, Respondent shall post a bond in the amount of \$25,000 in form satisfactory to the Agency, guaranteeing the submission of said program. Said bond shall further provide for a forfeiture of \$10,000 in the event Respondent's facilities are not in compliance with the relevant regulations and statutory provisions with respect to water pollution within 90 days from the date hereof.
3. Within 90 days from the date hereof, Respondent shall cease and desist from all violations of Section 12(a) of the Act, from violations of those provisions of SWB-14 which have been substantially re-enacted in Chapter 3: Water Pollution, of the Board's Regulations, and shall further cease and desist from violations of all other relevant provisions of Chapter 3: Water Pollution.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 24th day of June, 1973, by a vote of 4 to 0.

Christan Moffett