ILLINOIS POLLUTION CONTROL BOARD
May 12, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	# 71-25
	)	
	)	
CITY OF MARION	)	

Opinion of the Board (by Mr. Currie):

This is a complaint by the Agency charging water pollution and related violations at the City's sewage treatment plant. At the hearing the Special Assistant Attorney General representing the Agency, without consulting his client, agreed to a purported settlement of the case. The City admitted the violations alleged and stated that it was "understood" that plans would be submitted, a contract let, and the needed facilities completed by specified dates. The Special Assistant Attorney General further urged that no penalties be imposed on the ground that the City had not received timely notice of the requirements in question. No order was proposed.

Two days after the hearing we received a letter from the Assistant Attorney General in charge of environmental control for the Southern Region of the State advising us that the Agency disapproves of the proposed settlement and urges us to take appropriate action on the basis of the complaint, which in the Agency's view would include both a cease and desist order and money penalties.

It is elementary that an attorney is not to settle cases without the consent of his client. Our Procedural Rule 333 makes clear that no case is to be settled without a Board order based upon a written statement by the parties to the case setting forth the justifications for the proposal. It is the Agency, not its attorney, that is the party complainant in the present case, and the Agency's approval is a prerequisite to our consideration of any proposed settlement. Since the parties have not agreed, there is no settlement proposal for us to consider.

For future guidance we point out also that Rule 333 requires the parties to submit to the Board adequate information on which we can base an intelligent evaluation of whether any proposed

settlement is in the public interest. After all it is the Board, and not the Agency or its attorneys that is given statutory responsibility to determine whether a violation exists and what is the appropriate remedy. Cf. Environmental Protection Agency v. City of Springfield, # 70-9, decided May 12, 1971. Such information must contain a full stipulation of the relevant facts pertaining to the nature, extent, and causes of the violations, the nature of the respondent's operations and control equipment, any explanations of past failures to comply, and details as to future plans for compliance, including descriptions of additional control measures and the dates for implementing them, as well as a statement of reasons why no hearing should be conducted. Opportunity will also be provided by the Board for individual citizens to express their views as is contemplated by the statute.

The Agency asks us to pass on the case on the basis of our present information, but that information fails in a number of respects to satisfy what we need to make an intelligent decision, and the respondent is entitled to its day before the Board. A new hearing will be scheduled as expeditiously as is convenient for the parties; no second twenty-one-day notice will be necessary since the respondent has long been on notice of the charges against which it must defend.

It is so ordered.

I, Regina E. Ryan do hereby certify that the above Opinion was approved by the Board on this 12 of May, 1971.

Regina E. Ryan