

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

CITY OF MORRIS,)	
)	
Petitioner,)	
)	
v.)	PCB 86-4
)	(Combined Sewer
ILLINOIS ENVIRONMENTAL)	Overflow Exception)
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter now comes before the Board upon filing by the City of Morris (Morris) on October 21, 1992 of an amended petition (Amended Pet.) for exception from the Board's combined sewer overflow (CSO) regulations.

Morris currently holds a temporary exception from the CSO regulations¹. In the instant petition Morris seeks to make the exception permanent.

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act) [415 ILCS 5/1 *et seq.* (1992)]. The Board is charged under the Act to "determine, define and implement the environmental control standards applicable in the State of Illinois" [415 ILCS 5/5(b)]. As pertains to the instant matter, the Board has developed environmental control standards for CSOs and procedures by which exception may be granted. Morris asks the Board to grant it an exception under the CSO exception procedures.

More generally, the Board's responsibilities are based on the system of checks and balances integral to Illinois environmental governance: the Board is responsible for the rulemaking and principal adjudicatory functions, whereas the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties. The latter includes administering any revised CSO provisions that stem from today's action.

Based upon the record before the Board, the Board finds that Morris has made the showings necessary for grant of the requested permanent CSO exception, subject to certain conditions. The

¹ The temporary exception was granted based on a petition filed in 1986. The Board has retained jurisdiction during the pendency of the temporary exception, which accounts for the continued use of the original docket number.

Board will accordingly grant the CSO exception subject to these conditions.

CSO REGULATORY FRAMEWORK

The Board's CSO regulations are set forth at 35 Ill. Adm. 306.305. This section provides as follows:

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violation of applicable water standards unless an exception has been granted by the Board pursuant to Subpart D.

Sufficient treatment shall consist of the following:

- a) All dry weather flows, and the first flush of storm flows as determined by the Agency, shall meet the applicable effluent standards; and
- b) Additional flows, as determined by the Agency but not less than 10 times the average dry weather flow for the design year, shall receive a minimum of primary treatment and disinfection with adequate retention time; and
- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or
- d) Compliance with a treatment program authorized by the Board in an exception granted pursuant to Subpart D.

The Board's rules also provide for exception from the applicability of part or all of Section 306.305. The exception procedure is found at 35 Ill. Adm. Code 306.Subpart D (Sections 306.350 *et seq.*). It establishes that exceptions shall be granted "based upon water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge". (35 Ill. Adm. Code Section 306.350.) The exception procedure additionally provides that an exception may be justified based on showing of minimal discharge impact. (35 Ill. Adm. Code 306.361.) In the instant case, Morris contends, and the Agency agrees, that the remaining Morris CSOs produce a minimal discharge impact.

Grant of the relief that Morris requests would allow discharge of first flush of storm flows (306.305 (a)) plus flows larger than first flush (306.305(b)) without treatment.

PROCEDURAL HISTORY

Morris initially sought exception from the Board's CSO regulations via a petition filed singly on January 3, 1986. Following a public hearing and various supplementary pleadings filed by Morris and the Agency, the Board on April 7, 1988² declined to grant a full exception. However, the Board did grant a conditional temporary exception. Among the conditions imposed upon the temporary grant was that Morris file an amended petition on or before November 1, 1991 wherein it would present justification for a permanent exception.

On December 2, 1991 Morris filed a motion³ to extend the November 1, 1991 deadline to November 1, 1992. Among other matters, Morris contended that due to insufficient rainfall during 1991, it had been unable to fully characterize overflow events, and had thus been prevented from collecting data necessary to complete its amended petition. By order of January 23, 1992 the Board granted the motion extending Morris' filing deadline to November 1, 1992.

Morris filed the amended petition on October 21, 1992. The amended petition is accompanied by two documents of particular pertinence: Post-MCP Construction Phase II - Preliminary Stream Inspection, September 1992 (Stream Inspec.); and Post-MCP Construction CSO Study, October 1992 (CSO Study).

In January 1993 the Board began inquiries as to whether the Agency intended to comment on Morris' October 1992 amended petition. On June 3, 1993 the Board issued an order directing the Agency to reply to the amended petition before July 1, 1993, or to justify its continued delay.

The Agency filed a response on July 2, 1993. The Agency observed that, because of a continuing deficiency of information, it could not yet recommend that the Board grant Morris a

² The original order was adopted with accompanying opinion on April 7, 1988 (City of Morris v. Illinois Environmental Protection Agency, PCB 86-4, 88 PCB 5). Because the April 7, 1988 order contained an error in one of the completion dates, the Board in response to an Agency motion reissued the order in correct form on May 19, 1988 at 89 PCB 229.

³ Morris had by Board order of November 7, 1991 been granted an extension of time to file the motion on or before December 2, 1991.

permanent exception. Morris subsequently filed a motion for long-term extension of time to respond to the Agency's response, citing the need to gather the necessary additional information. The Board granted the extension.

On July 13, 1994 Morris supplemented the record with a response to the Agency's July 2, 1993 filing. On October 31, 1994 the Agency filed a reply to Morris' response (Oct. 31 Resp.)⁴. The Agency states that it now believes that Morris has provided the information necessary to support a permanent CSO exception.

With Morris' filing of July 13, 1994 and the Agency's filing of October 31, 1994, the Board believes that this matter is finally fully framed and that Morris' petition for permanent exception is now ready for determination on its merits.

BACKGROUND

Morris, which had a population of 10,270 in the 1990 census, is the county seat of Grundy County. Morris is located on the Illinois River, which forms the southern boundary of the city. Two other waterbodies of interest are Nettle Creek, which flows through the western portion of the city prior to discharging into the Illinois River, and an unnamed strip mine pond located near the northeast portion of Morris.

Morris historically has had a combined sanitary/storm sewer system. During high sewer discharges, typically caused by large precipitation events, the capacity of the Morris sewage treatment plant has been insufficient to treat the full combined discharge and accordingly some of the discharge has had to be bypassed with no or less than full treatment.

In recent years, Morris has sought to reduce the frequency and improve the character of CSO discharges by a combined construction and management program. A major portion of this effort has been initiated as part of Morris' Municipal Compliance Plan (MCP) project, construction of which culminated in 1987-90. Under the MCP Morris undertook modifications of its sewage treatment plant and changed its sewerage collection system. Morris contends that all MCP improvements have been completed timely with respect to the Board's previous orders in this

⁴ The response was accompanied by a motion for leave to file. That motion was granted by Board order of November 3, 1994.

matter⁵. More recently Morris has undertaken additional systems modifications, including increasing secondary capacity at the treatment plant and construction of storm sewers. (Amended Pet. at ¶4-5.)

The goal of Morris' MCP project has been to lessen the impact of the CSOs on the receiving waters to the point that any remaining impact would be an acceptable alternative to more costly full compliance. Morris contends that studies undertaken in the post-MCP construction period⁶ demonstrate that this goal has been achieved.

Morris has also undertaken several initiatives in the post-MCP period. Among these are improvements in the sewage treatment plant that increase the capacity for treating average daily flows from 1.34 MGD to 1.82 MGD, a 36% increase; similarly, the improvements increase the capacity to treat maximum flows from 3.18 MGD to 4.36 MGD. (CSO Study at p. 4.) The significance of these improvements is that they allow Morris to pump additional combined sewage from the system through the treatment plant, thereby reducing the amount that would exit as overflow from the sewers. (Id.)

In progress is the construction of new sewers in the southern portion of Morris' business district. These sewers will divert storm waters that presently contribute to CSOs. (CSO Study at p. 5; Oct. 31 response at Attachment 1.)

ENVIRONMENTAL IMPACT

The Illinois River at Morris is a major navigational stream, with a high volume of flow; average stream width is 500-600 feet and ten-year low flow is 3188 cfs (Stream Inspec. at p. 8). The land along the Morris side of the river is primarily industrial, with the exception of Stratton Park, a state-owned park at which boat-access to the river is provided. Land along the south side of the river is primarily agricultural. Two of the Morris CSOs, CSO-5 and CSO-6, discharge to the Illinois River.

⁵ The principal construction programs and schedules for their completion have been set forth in the Board's opinion and order of April 7, 1988 at 88 PCB 5 and of May 19, 1988 at 89 PCB 229.

⁶ These studies were originally scheduled for 1991 in compliance with conditions #4 and #6 of the Board's order of May 19, 1988 (89 PCB 230-1). However, due to limited rainfall during 1991, the studies had to be extended into 1992, as recognized in the Board's order of January 23, 1992 (129 PCB 255).

Nettle Creek through Morris has an average width of 20 feet; its ten-year low flow is zero. (Stream Inspec. at p. 7.) Land use adjacent to the creek ranges from residential to wooded. In the latter case, the creek passes through Gebhard Woods State Park, which is located at the southwest side of Morris. Nettle Creek is the discharge point of five of Morris' original CSOs, SSO-1⁷, SSO-3, SSO-4, CSO-3, and CSO-4.

The unnamed strip mine pond is located in an area of residences and reclaimed strip-mined land. One of Morris' original SSOs, SSO-2, discharges to the pond.

Morris has provided information regarding the nature of the areas around each of the CSOs. This includes a description of the stream at each of the overflow points (Stream Inspec. at p. 3-7), stream hydraulic and morphologic factors at and adjacent to the overflow points (Id. at p. 7-10), and descriptions of the streamside property, including topography, land cover, and land use (Id. at p. 10-12).

Morris further observed CSO events from late 1991 through July 1992 involving rainfall episodes of 0.38, 0.41, 1.07, 1.09, 1.11, 1.63, 2.00, and 2.08 total inches and ranging in rate from 0.12 inches per hour to 1.60 inches per hour. (Stream Inspec. at Exh. B). This record was further augmented by observations associated with several large rainfalls in August and September 1992, including a 3.34 inch rainfall on September 10, 1992. (CSO Study at p. 11-12.)

Based on this record Morris concludes that as of 1992 only two of its original nine CSOs any longer experience overflows in response to a "once-in-a-year rainfall"; these are the two CSOs that discharge to the Illinois River, CSO-5 and CSO-6. (CSO Study at p. 9.) Observations on the water and its environs are consistent with this decrease frequency of overflow events. (Stream Inspec. at p. 3-7.)

As regards CSO-5 and CSO-6, Morris observes that they are tributary to the Illinois River, which has a large discharge even under low-flow conditions. Morris also observes that additional sewer construction currently in progress will further reduce any impact that CSO-5 and CSO-6 may have. The Agency observes that it "agrees with [Morris] that this construction will alleviate the discharges from CSO's 5 and 6" and that Morris is "committed to constructing an additional section of storm sewer . . . should the ongoing construction provide insufficient relief". (Oct. 31 response at ¶20 and Attachment 1.)

⁷ Sanitary Sewer Overflow. Morris contends that some of its SSOs actually function as CSOs, and accordingly has addressed them in the instant pleading in the same manner as the CSOs. (Pet. Resp. at 2-3.)

CONDITIONS ATTACHED TO THE GRANT OF EXCEPTION

Today's CSO exception is granted subject to several conditions. Among these are requirements that Morris undertake several tasks to further improve its sewerage system (see conditions 1-4 of today's order). These conditions are generally as recommended by the Agency (Oct. 31 response, p. 6-7) based upon commitments made by Morris (Amend. Pet. and Oct. 31 response, Attachment 1).

In each of these conditions, the Board has reviewed the additional tasks required of Morris and finds that they are necessary to attain minimal discharge impact, and hence to justify grant of the permanent exception. The grant of exception will accordingly be made conditional upon Morris' completion of each of these tasks.

CONCLUSION

The Board finds that a permanent CSO exception for the City of Morris is justified based on the achievement of minimal discharge impact.

This opinion constitutes the Board's final findings of fact and conclusions of law in this matter.

ORDER

The City of Morris (Morris), Grundy County, is hereby granted an exception from the requirements of 35 Ill. Adm. Code 306.305(a) regarding first flush of storm flows and from 35 Ill. Adm. Code 306.305(b), subject to the following:

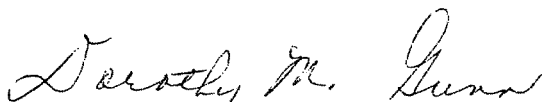
1. Morris shall complete the construction of the section of storm sewer in the area bounded on the north by Douglas Street, on the south by the Illinois & Michigan Canal, on the west by Price Street, and on the east by East Street by December 31, 1995.
2. Morris shall implement by October 1, 1995 the following program to identify residences that contribute footing drain water to the sewer system and shall require that those residences disconnect the drains from the system:
 - A) Combination sewers in problem neighborhoods shall be smoke tested;
 - B) After the smoke testing is complete, Morris shall conduct house-to-house plumbing inspections and homeowner interviews; and

- C) If the above steps do not provide sufficient information to determine whether footing drains are connected to the combination sewers, Morris shall inject dyed water alongside the foundation through a modified route feeder to ascertain whether footing tiles are connected to the sewer.
3. Upon completion of the storm sewer improvements in conditions (1) and (2), Morris shall conduct a flow monitoring study of the combined sewer system and assess changes in overflow frequencies, duration, and strengths. Morris shall submit this report to the Agency within 90 days of the completion of monitoring.
 4. Morris shall conduct such further investigation as is necessary to locate and remove all remaining sanitary sewage sources contributing to the replaced trunk sewer that terminates as CSO-2. Once these removals are completed Morris shall disconnect this sewer from the sanitary sewer and operate it as a storm sewer. Morris shall send written verification of the completion of this project to the Agency within 30 days of the disconnection from the sanitary sewer.
 5. The grant of this exception does not preclude the Agency from requiring as a permit condition a CSO monitoring program sufficient to assess compliance with this exception and any other Board regulations and other controls, as needed, for compliance with water quality standards.
 6. The grant of this exception is not to be construed as affecting the enforceability of any provisions of this exception, other Board regulations, the Environmental Protection Act, 415 ILCS 5/1 et seq., the Clean Water Act, or any other applicable federal regulation.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of December, 1994, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board