

ILLINOIS POLLUTION CONTROL BOARD
November 21, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-5
)
CITY OF SALEM,)
)
Respondent.)

MR. VINCENT W. MORETH, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

MR. MICHAEL JONES, CITY ATTORNEY, APPEARED ON BEHALF OF THE
RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the January 10, 1983
Complaint brought by the Illinois Environmental Protection Agency
(Agency).

Count I of the Complaint alleged that, during various months
from February, 1981 until October, 1982, the Respondent discharged
effluent from its wastewater treatment plant (WWTP) containing
excessive levels of five-day biochemical oxygen demand (BOD₅) and
total suspended solids (TSS) in violation of the effluent limitations
set forth in its NPDES Permit No. IL 0023264; 35 Ill. Adm. Code
309.102 (formerly Rule 901 of Chapter 3: Water Pollution Regula-
tions); and Section 12(a) and 12(f) of the Illinois Environmental
Protection Act (Act).

Count II alleged that, on various specified dates between
February 16, 1981 and November 26, 1982, the Respondent discharged
effluent from its WWTP with concentrations of BOD₅ and TSS in
excess of five times the applicable numerical standards in violation
of 35 Ill. Adm. Code 304.120(c) [formerly Rule 404(c) of Chapter
3: Water Pollution Regulations] and Section 12(a) of the Act.

A hearing was held on August 21, 1984 in Salem, Illinois and
the parties filed a Stipulation and Proposal for Settlement on
August 23, 1984.

The City of Salem is a municipality of approximately 7,300
people located in central Marion County, Illinois on U.S. Route
50 and Interstate 57. The Respondent owns and operates a sewage
treatment plant which is a contact stabilization variation of the
activated sludge process followed by rapid sand filters and
chlorination. This facility includes bar screen/comminutor

primary sedimentation, barminutor, grit chamber, primary sedimentation tank, activated sludge biological treatment, secondary clarification, tertiary sand filtration, and effluent disinfection with chlorine.

Under normal operating conditions (no rainfall), the City of Salem's WWTP discharges less than 10 mg/l BOD₅ and 12 mg/l suspended solids into Town Creek, a navigable Illinois water which is tributary to Crooked Creek and the Kaskaskia River. However, because of the apparent misdesign or misconstruction of the plant, if rainfall exceeds one inch or more, the Respondent's WWTP becomes flooded and fails to meet the requisite effluent standards. During such a flooding period, the flow sometimes exceeds five million gallons per day which is twice the WWTP's rated capacity. When the flooding picks up high solids sludge from the City of Salem's plant and washes it to the creek, it often takes a period of two weeks for the facility to regain treatment efficiency.

Thus, the City of Salem has a prior history of problems associated with the operations of its wastewater treatment plant. On June 6, 1978, the City of Salem requested a variance from Rule 602(b) of Chapter 3: Water Pollution Regulations in order to construct a bypass which would carry the excess flow during flooding, with at least minimal chlorination, directly to the receiving stream. On August 24, 1978, the Board dismissed the City of Salem's petition without prejudice because the City failed to demonstrate compliance with applicable Federal Water Pollution Control Act requirements and failed to provide information on the downstream effects of its proposed bypass. (See: City of Salem v. IEPA, PCB 78-167, 32 PCB 165, Opinion and Order of August 24, 1978). On May 24, 1982, the City of Salem again requested a variance in PCB 82-64 to construct a temporary bypass, but failed to pursue its request for relief. (See: City of Salem v. IEPA, PCB 82-64, Order of June 14, 1984).

The City of Salem's wastewater treatment plant was also the subject of a prior enforcement action in PCB 78-137 brought by the Agency for violations which were similar to the violations alleged in the complaint filed in the present case. (See: IEPA v. City of Salem, PCB 78-137, 40 PCB 111, Opinion and Order of December 18, 1980). The Complaint in PCB 78-137 alleged that the City of Salem violated the BOD₅, total suspended solids, and fecal coliform requirements set forth in its NPDES Permit and alleged that the City failed to maintain a flow of 1.0 million gallons per day on various specified dates between November, 1977 and September, 1978. On December 18, 1980, the Board issued an Order in PCB 78-137 which accepted the proposed settlement agreement; ordered the City of Salem to timely perform all actions agreed to in the Stipulated Settlement agreement; imposed a penalty of \$2,500.00; and found the City in violation of Rules 410(a) and 901 of Chapter 3: Water Pollution Regulations and Section 12(f) of the Act.

Pursuant to the Stipulated Settlement agreement in PCB 78-137, the City of Salem was required to: (1) file a variance petition with the Board within a reasonable time after "the next significant storm event," and (2) commit to a grant program to expand, modify, and upgrade its wastewater treatment plant in accordance with a specified compliance schedule. However, the Agency has indicated that the City of Salem has "failed to comply with the stipulated settlement" in PCB 78-137 and "has consistently failed to meet effluent requirement for BOD₅ and total suspended solids of its NPDES Permit." (Stip. 4). Moreover, the Agency has noted that "there have been continuing violations at the facility during periods of rainfall, and during periods of reduced efficiency of the treatment process due to rainfall since the filing of the Complaint in Cause No. PCB 78-137" (and also since the filing of the Complaint in the present case, PCB 83-5). (Stip. 4).

Although the City has admitted the allegations set forth in the Complaint in PCB 83-5 for settlement purposes, the Respondent has maintained that excursions beyond the NPDES Permit limitations have been due to "misdemeanor" of the WWTP which render it inadequate to properly handle incoming flows during rainfall. (Stip. 4). Because heavy rainfall results in large flows into the WWTP which wash biological solids from the activated sludge process into the receiving stream, a pollution load due to the washout of biological solids, as well as reduced treatment efficiency, serves to increase the levels of pollutants which are discharged from the plant during periods of substantial rainfall. (Stip. 4).

The Agency has stated that: (1) the City of Salem discharged effluent from its WWTP in violation of its NPDES Permit limits for BOD₅ and TSS during 32 specified months between February, 1981 and June, 1984; (2) effluent was discharged from the WWTP with concentrations of BOD₅ and TSS in excess of five times the numerical standard set forth in 35 Ill. Adm. Code 304.120(c) on numerous specified dates between February 16, 1981 and June 21, 1984, as indicated on notices of non-compliance submitted to the Agency; and (3) grab samples collected and analyzed by the Agency indicated that the City of Salem's WWTP discharged effluent in excess of five times the numerical standard set forth in 35 Ill. Adm. Code 304.120(c) on at least 13 specified dates between February 23, 1981 and June 20, 1984. (Stip. 5-9).

The Respondent's collection system consists of separate sanitary and storm sewers. Nonetheless, during periods of wet weather (especially during heavy rainfall), the City of Salem's sanitary sewer system suffers from inflow and infiltration problems which result in various overflows occurring throughout the system. (Stip. 9). Although accurate flow measurements have not been made because of the lack of an appropriate flow measuring device, the estimated peak flow rate to the Respondent's WWTP are probably in the range of five to ten million of gallons per day. (Stip. 9). The Respondent's wastewater treatment facility has experienced some washouts of solids from the aeration tanks and clarifiers

when its WWTP's hydraulic capacity is exceeded during wet weather periods, which, if not bypassed, have a tendency to clog the tertiary sand filter. These problems, which have persisted since 1975, resulted in the prior enforcement action in PCB 78-137 and still have not been corrected. (Stip. 9).

Although the City of Salem has continually encountered serious bypass problems, it has not expeditiously proceeded to upgrade its wastewater treatment facilities to properly handle anticipated heavy rain water flows. Instead, the Respondent has filed two variance petitions before the Board in PCB 78-167 and PCB 82-64, neither of which has resulted in the granting of a variance to the City of Salem. While the City of Salem's wastewater treatment plant was upgraded in 1975 and became operational in January of 1976, the Agency has indicated that it "is still withholding final grant payment for this upgraded facility due to, inter alia, deficiencies in the final clarifiers." (Stip. 10). The Agency has also noted that, in respect to the City of Salem's commitment to the prior stipulated settlement in the enforcement action in PCB 78-137, the City of Salem "has not completed its interim report in a timely fashion" pursuant to the Board's Order in that case. (See: IEPA v. City of Salem, PCB 78-137, 40 PCB 111, Opinion and Order of December 18, 1980.)

Pursuant to the compliance schedule delineated in the prior Stipulated Settlement in PCB 78-137, the City of Salem was required to provide an interim report to the Agency pertaining to testing and a physical survey within 120 days of its Step 1 grant amendment approval. (Stip. 10). Because the United States Environmental Protection Agency (USEPA) issued the grant amendment on February 26, 1981, the City of Salem was required to produce the interim report within 120 days (i.e., on, or before, July 27, 1981). Instead, the City of Salem submitted its interim report to the Agency's Grant Section 229 days later (i.e., on March 16, 1982). Moreover, the Agency's Grant Section found this interim report to be both inadequate and incomplete. (Stip. 10).

Because of the City of Salem's significant sewage treatment system deficiencies, the Agency has decided to allow the Respondent to install a temporary bypass at the primary tank effluent line which will bypass excess storm water flow during heavy rainfall in the wet weather months. When the effluent flow rate reaches 1.6 million gallons per day, this bypassing may be initiated and will be monitored pursuant to the requirements set forth in the City of Salem's NPDES Permit No. IL 0023264. (Stip. 11). On January 17, 1979, the City of Salem applied for renewal of this NPDES Permit and the Agency has indicated that it intends to issue a revised NPDES Permit to the Respondent in the near future. (Stip. 2).

Additionally, the parties have developed a long-range plan for expanding, modifying, and upgrading the City of Salem's wastewater treatment facilities to enable the City to come into compliance with all applicable Board regulations and the Act in

accordance with a specified compliance schedule. (See: Schedule A on pages 14-15 of the Stipulation in PCB 83-5.) The parties anticipate that this upgrading project will be completed by December of 1987. (Stip. 11). When construction begins (i.e., the anticipated date of the initiation of construction is August, 1986), the City of Salem shall provide the Agency with quarterly construction reports on the progress that is being made. If it appears that the City of Salem may be unable to complete any steps set forth in Schedule A within the time period indicated, the City is obligated to: (1) immediately notify the Agency in writing about the delay; (2) clearly state the reasons for the delay; and (3) indicate the steps to be taken to enable the City of Salem to comply with the schedule in the future. (Stip. 11). The City of Salem has agreed to comply with Schedule A and the provisions of the Stipulation in PCB 83-5 whether or not it obtains grant funds to help finance its activities. (Stip. 11).

The City of Salem's obligation to meet any requirement set forth in the Stipulation and Proposal for Settlement filed on August 23, 1984 is subject to a force majeure clause which excuses compliance "to the extent caused by the public enemy, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage or war, or any other circumstances agreed to in writing by the parties." (Stip. 12). If this force majeure clause is activated by any of the previously mentioned events, the parties have indicated that they will "stipulate to a reasonable extension of time for achieving the requirements of the agreement." (Stip. 12).

Moreover, the parties have stipulated that either party may submit the matter to the Board for resolution "should the parties fail to agree on what circumstances shall excuse a delay in performance or on the period of extension because of such excuse." (Stip. 12). Accordingly, the Board will retain jurisdiction in this matter for three years, for the purpose of resolving any disputes arising from the Stipulation's force majeure clause.

The proposed settlement agreement provides that the City of Salem admits the violations alleged in the Complaint and agrees to: (1) follow a specified compliance plan and schedule to correct its environmental problems by upgrading its wastewater treatment facilities, and (2) pay a stipulated penalty of \$5,000 in two installments of \$2,500 each into the Environmental Protection Trust Fund. (Stip. 1-15).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondent, the City of Salem, has violated 35 Ill. Adm. Code 304.120(c), 35 Ill. Adm. Code 309.102, and Section 12(a) and 12(f) of the Act. The Respondent will be

ordered to follow the agreed-upon compliance plan and schedule to remedy its environmental problems and to pay the stipulated penalty of \$5,000 in two equal installments.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, the City of Salem, has violated 35 Ill. Adm. Code 304.120(c), 35 Ill. Adm. Code 309.102, and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.
2. Within 30 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the first installment of \$2,500 (on the total stipulated penalty of \$5,000) which is to be sent to:


Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

The remaining installment of \$2,500 (on the total stipulated penalty of \$5,000) shall be paid within 180 days thereafter. Payment on the second installment of \$2,500 shall be paid in the same manner and fashion as the first installment.

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 23, 1984, which is incorporated by reference as if fully set forth herein.
4. The Board shall retain jurisdiction in this matter for three years.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of November, 1984 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board