

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1996

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 94-275
)	(Enforcement - Water)
BOYD BROTHERS, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

BOYD BROTHERS, INC., an Illinois)	
corporation,)	
)	
Complainant,)	
)	
v.)	PCB 94-311
)	(Enforcement - Water - Citizens)
ABANDONED MINED LANDS)	
RECLAMATION COUNCIL, an Illinois)	(Consolidated)
state entity,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On September 28, 1994 the Illinois Attorney General, on behalf of the People of the State of Illinois and the Illinois Environmental Protection Agency (Agency), filed a formal complaint naming as respondent Boyd Brothers, Inc. (Boyd Brothers), located in Sesser, Franklin County, Illinois. The Board accepted this complaint for hearing on October 7, 1994 as PCB 94-275. On October 31, 1994, Boyd Brothers, filed a complaint naming as respondent Abandoned Mined Lands Reclamation Council (AMLRC), an Illinois state entity located at 928 South Spring, Springfield, Sangamon County, Illinois. The Board accepted this latter complaint for hearing on December 1, 1994 as PCB 94-311 and consolidated it with PCB 94-275.

The two-count complaint in PCB 94-275 alleges that Boyd Brothers violated Sections 12(a) of the Environmental Protection Act (Act) (415 ILCS 5/12(a)) and 35 Ill. Adm. Code 302.203, 406.106, 406.107, and 406.202 by causing or allowing the discharge of mine effluent. In PCB 94-311, Boyd Brothers asserts that if it is found liable for any violations, then AMLRC is also liable, in that the discharge at issue was "pursuant to the approval and

direction of the AMLRC and in accordance with the terms and conditions of the contract [between it and Boyd Brothers].” (PCB 94-311, Comp. para. 21)

On May 13, 1996 Boyd Brothers and the People filed a stipulation and proposal for settlement in PCB 94-275, accompanied by a request for relief from the requirements of Section 31(a)(1) of the Act that proposed stipulated settlements be presented at public hearing. (415 ILCS 5/31(a)(1) (1994).) The stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Boyd Brothers denies the alleged violations and agrees to pay a total civil penalty of \$9,750.00. No stipulation and proposal for settlement or motion to dismiss has been filed as to PCB 94-311, but in paragraph 3 on page 7 of the stipulation Boyd Brothers agrees to the dismissal of PCB 94-311 with prejudice in the event the Board accepts the stipulation in PCB 94-275.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act’s hearing requirement on May 13, 1996. The Board published a notice of the waiver on May 16, 1996; no objection to the granting of the waiver was received. Waiver of hearing is hereby granted.

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180 in PCB 94-275. This settlement agreement in no way affects respondent’s responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board’s pollution control regulations. Again, acceptance of the stipulation in PCB 94-275 results in the dismissal of PCB 94-311, as indicated in paragraph 5 of the order below.

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

ORDER

- 1) The Board hereby accepts the stipulation and settlement agreement in PCB 94-275 executed by the People of the State of Illinois and Boyd Brothers located in Sesser, Franklin County, Illinois. The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.
- 2) Boyd Brothers shall pay the sum of \$9,000.00 within 60 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division

2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face Respondent's federal employer identification number or social security number and that payment is directed to the Environmental Protection Trust Fund.

- 3) Boyd Brothers shall also pay the sum of \$750.00 within 60 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Hazardous Waste Fund, in the same manner and to the same address provided in paragraph 2 above:

The certified check or money order shall clearly indicate on its face Respondent's federal employer identification number or social security number and that payment is directed to the Hazardous Waste Fund.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

- 4) Boyd Brothers shall cease and desist from the alleged violations.
- 5) PCB 94-311 is dismissed with prejudice and the docket is closed. (This dismissal is intended to have no collateral effect in pending Court of Claims litigation between AMLRC and Boyd Brothers.)

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) 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 ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board