

ILLINOIS POLLUTION CONTROL BOARD  
September 16, 1971

ENVIRONMENTAL PROTECTION AGENCY )  
and JULIUS L. BOGNAR )  
 )  
v. ) ## PCB 71-137, 71-139  
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 )  
STEELCO CHEMICAL CORP. et al. )

Opinion of the Board (by Mr. Currie):

On June 9, 1971, we received from the Attorney General, on behalf of the Agency, a complaint alleging air pollution violations at the respondents' plant in Lemont, with respect to the discharge of chlorine gas. A complaint was also filed in the Circuit Court by the Attorney General with respect to the same matter, seeking both temporary and permanent relief.

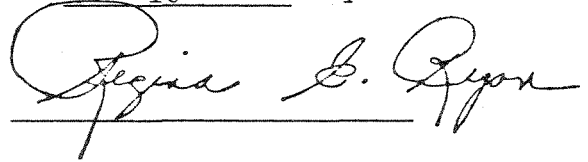
After extensive proceedings in the Circuit Court, including appearances relating to the respondents' motion to enjoin the proceedings before this Board, the Attorney General on behalf of the Agency filed with us a motion to dismiss the complaint before the Board. Oral argument was heard by the full Board at its regular meeting September 7. The respondent had no objection to the motion. The Attorney General's spokesman related that the Village of Lemont, which had intervened, had no objection, and that Mr. Bognar, complainant in a related case against the same respondents (# 71-139), could not immediately be contacted. The Attorney General asked for speedy resolution of the motion as conducive to an early termination of jurisdictional litigation in the Circuit Court.

The Attorney General argued that it was his intention to press the pending Circuit Court proceeding seeking permanent relief; that our dismissal would avoid a duplication of effort in trying the merits of the case; and that it would put an end to litigation over preliminary questions, thus facilitating resolution of the alleged pollution problem. We found these arguments convincing. The Environmental Protection Act clearly gives the Agency and the Attorney General a choice of forums with respect to the merits of pollution cases. Obviously the same case should not be tried in both of them, and it is up to the complainants whether to litigate here or there. When temporary injunctive relief is sought to prevent irreparable harm while the case is being tried, as we have held (*Hemmerich v. Lloyd Fry Roofing Co.*, # 71-33, May 12, 1971), it is necessary that such relief be obtained from the court, since the

statute does not provide for the Board to give it. We do not think that this statutory gap means the Board cannot try on the merits cases in which preliminary court relief has been sought, but that issue is not now before us. The parties are agreed that this case should be tried in the Circuit Court, and we consequently dismissed the Board case on September 7. This opinion gives the reasons for that action, which was without prejudice, of course, to the rights of the complainant in # 71-139, who was not represented at the September 7 argument.

On September 8, however, we received from Mr. Bognar a motion to dismiss his own action without prejudice. We grant that motion for similar reasons, in order to avoid multiple litigation in two forums at the same time.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion this 16 day of September, 1971.

A handwritten signature in cursive script, reading "Regina E. Ryan", is written over a horizontal line.