

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1982

CITIZENS FOR A BETTER ENVIRONMENT,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 74-171
	)	
BULK TERMINALS COMPANY AND	)	
GERALD L. SPAETH,	)	
	)	
Respondent.	)	
	)	
and	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 74-193
	)	
BULK TERMINALS COMPANY AND	)	CONSOLIDATED
CABOT CORPORATION,	)	
	)	
Respondent.	)	

MR. DENNIS R. FIELDS, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

MS. ANDREA SYKES FOOTE, LORD, BISSEL AND BROOK, APPEARED ON BEHALF OF BULK TERMINALS COMPANY AND GERALD L. SPAETH.

MR. ROBERT S. MILNIKEL, PETERSON, ROSS, SCHLOERB AND SEIDEL, APPEARED ON BEHALF OF CABOT CORPORATION.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

This matter is before the Board upon the May 9, 1974 Complaint by Citizens for A Better Environment (CBE) against Bulk Terminals Company and Gerald L. Spaeth (Bulk Terminals) alleging violation of Rules 102 and 103(b)(1) of the Board's Air Pollution Regulations and Sections 9(a) and 9(b) of the Illinois Environmental Protection Act (Act). This action was subsequently consolidated with Illinois Environmental Protection Agency v. Bulk Terminals Company and Cabot Corporation, PCB 74-193, by action of the Hearing Officer herein. The Board hereby waives any procedural defects concerning that consolidation and ratifies the Hearing Officer's action. PCB 74-193 alleges violation of Rule 102 and of Section 9(a) of the Act.

During the pendency of this matter a parallel action was being considered by the Circuit Court and the Appellate Court of Illinois resulting in a stay of Board action in this matter until September of 1977. At that time the Respondents herein appealed a Board Order refusing to dismiss this action based upon the doctrine of res judicata to the Appellate Court which resulted in a further stay of this matter until December of 1979. The Appellate Court having upheld the Board's denial of the Motion to Dismiss, the proceeding started anew. After a period of discovery and four additional hearings, along with a not too gentle prodding by the Board, the parties presented a proposed Settlement Agreement and Stipulation to Dismiss (Stipulation) of the January 30, 1981 hearing, a signed copy of which was filed with the Board on January 6, 1982. The Board has received no public comment in this matter.

The Stipulation presents the facts of this case as follows. Bulk Terminals (Bulk) owns and operates a public facility for the bulk storage of various types of liquid at 12200 South Stony Island Avenue, Chicago, Illinois. The facility is located in an industrial area, employs approximately 65 people, and is accessible by railroad cars, trucks, barges and ocean-going vessels. Gerald L. Spaeth was president of Bulk Terminals during the time period alleged in the complaint, and Cabot Corporation (Cabot) utilized Bulk's storage facilities for the storage and transit of silicon tetrachloride in 1972 through 1974. Silicon tetrachloride, the material which allegedly produced the air pollution, is a colorless liquid which reacts with water or moisture to form silicon dioxide and hydrochloric acid, which has a suffocating odor in significant concentrations and may irritate eyes and skin. On April 26, 1974, a leak developed in a pipe connected to one of Bulk's storage tanks containing Cabot's silicon tetrachloride. During the next several days, the Chicago Fire Department and representatives of Bulk, Cabot and other governmental agencies attempted to stop the leak and the resulting emissions. These emissions resulted in the consolidated matters before the Board herein.

CBE has chosen not to pursue this matter individually but rather has deferred to the Illinois Environmental Protection Agency's (Agency) discretion and judgment regarding the prosecution of these actions. The Agency contends that it would prove at a hearing on this Complaint that a cloud containing acid extended into the atmosphere for several miles, that hundreds of persons were evacuated from their homes and were physically affected by the acid, and that substantial property damage resulted, all unreasonably interfering with the enjoyment of life and property. The Respondents contend they would prove any evacuation was unnecessary and was not officially ordered, that no one was significantly affected by the acid, that property damage was minimal, and that there was no unreasonable interference with the enjoyment of life and property.

The terms of settlement in the proposed Stipulation include an agreement by Bulk to follow enumerated procedures, including notification of the Plaintiffs herein, should any of a number of listed materials be stored by Bulk at its terminal in the future. These procedures include review of the facilities by an independent registered engineer of the State of Illinois and a certification that all codes, regulations, and accepted engineering standards and practices for the storage of such materials have been complied with. In addition, Bulk shall develop and implement a program of regularly scheduled inspection and preventive maintenance relating to such storage in compliance with published recommendations and procedures of the American Petroleum Institute for Tanks, Piping, Pumps and Associated Equipment. A detailed set of emergency procedures relating to the storage of the materials and a training program for Bulk's employees in how to implement such emergency procedures shall be prepared prior to storing any of the listed materials.

In addition, the Stipulation contains an agreement to allow inspection by the Agency or the Illinois Attorney General's office, upon reasonable notice, and affirmation of Bulk's duty to comply with all statutes, regulations and other laws including the requirements for obtaining appropriate permits notwithstanding any provision in the Stipulation. Bulk Terminals and the Cabot Corporation shall each pay to the State of Illinois the sum of \$10,000 in settlement of this matter. The parties agree that this matter shall be dismissed in consideration of the Settlement Agreement.

This matter has been before the Board for almost eight years. Considerable amounts of time and resources have been expended by the parties culminating in the proposed Stipulation and Settlement Agreement. The Board finds the Settlement Agreement to be a reasonable resolution of this matter in that it relieves the parties of further costs of litigation while adequately protecting the environment and furthering the purposes of the Illinois Environmental Protection Act. The Board, therefore, accepts the Stipulation and will dismiss these actions in consideration of the execution of the Settlement Agreement by the parties herein.

This Opinion constitutes the findings of fact and conclusion of law of the Board in this matter.

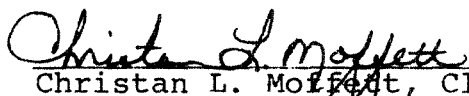
#### ORDER

1. The parties herein shall execute their duties pursuant to the Settlement Agreement and Stipulation to Dismiss filed January 6, 1982 (Stipulation) which Stipulation is hereby incorporated by reference as if fully set forth herein.

2. Within 45 days of the date of this Order, Bulk Terminals Company shall pay, by certified check or money order payable to the State of Illinois, the sum of \$10,000 which is to be sent to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.
3. Within 45 days of the date of this Order, Cabot Corporation shall pay, by certified check or money order payable to the State of Illinois, the sum of \$10,000 which is to be sent to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.
4. In consideration of the Stipulation in paragraph 1 above. Docket Nos. PCB 74-171 and PCB 74-193 are hereby dismissed with prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 4<sup>th</sup> day of February, 1982 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board