

ILLINOIS POLLUTION CONTROL BOARD  
September 13, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 ) #71-51C  
 v. )  
 )  
 CITY OF CHAMPAIGN, ILLINOIS et al )

SUPPLEMENTAL ORDER OF THE BOARD PURSUANT TO REMAND FROM THE  
APPELLATE COURT OF ILLINOIS, 4TH DISTRICT (BY: Mr. Henss)

This proceeding was brought originally by the Environmental Protection Agency against the Cities of Champaign and Urbana. Urbana's Motion for Severence was granted.

On motion of Champaign and by the Order of the Board, a Third-Party Complaint was filed by Champaign against Alpha Material and Fuel Company (Alpha) and the Board of Directors of the University of Illinois (University).

The basic action relates to certain polluttional discharges caused or allowed by the City of Champaign, the University and Alpha, creating water pollution of Boneyard Creek. After hearings, the Board, on September 16, 1971, entered the following Order:

- "1. The City of Champaign shall, by no later than March 16, 1972, submit to the Environmental Protection Agency and to the Pollution Control Board, a report containing, but not limited to, the following:
  - a) A description of the condition of the Boneyard and, to the extent reasonably determinable, the sources of its pollution;
  - b) A description of steps taken by the City in the intervening period to deal with cases of pollution of Boneyard Creek;
  - c) A detailed program for the policing of Boneyard Creek and of its sewers in order to prevent the discharge of unnecessary polluttants into the Creek through the storm sewer system operated and maintained by the City;
  - d) A detailed program designed to clean up and improve the quality of the water in Boneyard Creek within a reasonable but fixed period of time, to the extent practicable.

2. The University of Illinois shall, by no later than December 3, 1971, submit to the Environmental Protection Agency and the Pollution Control Board a report containing, but not limited to, the following:
  - a) A program detailing the corrective measures to be taken in the future by the University to control the discharge of contaminants from the Abbott Power Plant into sewers tributary to the Boneyard Creek. Such plan shall include measures for the interim control of pH and settleable solids and shall indicate a fixed time schedule for the implementation and completion of the program.
3. Alpha Material and Fuel Company shall cease and desist the discharge of contaminants into the Boneyard Creek so as to cause or tend to cause water pollution of the Creek.
4. Upon receipt of the above required reports, the Board will decide what further proceedings are appropriate."

The City of Champaign and the University sought review in the Appellate Court, 4th District, pursuant to Section 41 of the Environmental Protection Act. No appeal was filed by Alpha. On July 5, 1973, the Appellate Court entered its Opinion and Order which provided as follows:

"The order does require the City to submit to the Board 'a detailed program for the policing of Boneyard Creek and of its storm sewers in order to prevent the discharge of unnecessary pollutants into the creek from the storm sewer system operated and maintained by the City'. This record indicates that the City does own storm sewers which empty into Boneyard Creek and that street surface water of the City finds its way into Boneyard Creek. The City contracted with the Urbana-Champaign Sanitary District in 1949 for the Sanitary District 'to provide and keep in repair an adequate system of storm sewer drainage therein and to correct any unsanitary and unhealthful conditions existing therein.' Until after the City files its program for policing the discharge of unnecessary pollutants into Boneyard Creek, there can be no appropriate determination whether or not or to what extent the responsibility rests with the City or other parties nor any basis to determine if, when, how or by whom the Boneyard may be made pure. We think the action of the Board must be within the pleadings, supported by the evidence and present a justiciable issue. See City of Monmouth v. EPA, 10 Ill. App. 2d 823, 295 N.E. 2d 136.

"Its order as to the University is vacated and for naught held. Its order as to the City is vacated and the cause remanded for such further proceedings as may now be deemed proper and appropriate within the scope of existing or appropriate supplemental pleadings and evidence.

Reversed in part; reversed and remanded in part."

The absence of any appeal by Alpha eliminates the need to make any further disposition with respect to it. The Appellate Court's Order vacating our Order with respect to the University eliminates any need for further action on our part with respect to it.

The remand by the Appellate Court and the necessity for any further action on our part are solely with regard to the City of Champaign. The report of the City pursuant to our September 16, 1971 Order has been filed. We direct the Environmental Protection Agency and the City of Champaign to submit to this Board within 35 days from the date hereof, their respective pleadings for such further proceedings as each party, respectively, believes necessary and appropriate pursuant to the report as submitted and the decision and remand of the Appellate Court, 4th District. We shall enter such other and further orders as appear appropriate in the premises upon receipt of the foregoing submissions herein directed to be filed.

IT IS SO ORDERED.

Mr. Odell abstains.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Order was adopted on the 13<sup>th</sup> day of September, 1973, by a vote of 3 to 0.

Christan I. Moffett

