

ILLINOIS POLLUTION CONTROL BOARD

November 1, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
)
 vs.) PCB 73-85
)
)
 ALLIS-CHALMERS CORPORATION, a)
 Delaware corporation, qualified)
 to do business in Illinois, and RYDER)
 TRUCK RENTAL, INC., a Florida)
 corporation qualified to do business in)
 Illinois)

OPINION AND ORDER OF THE BOARD (by Dr. Odell):

Respondent Allis-Chalmers Corporation, owns and operates a diesel oil fuel depot in the Village of Carol Stream, Du Page County, Illinois. Respondent Ryder Truck Rental, Inc. owns certain trailer trucks leased to Allis-Chalmers and services such trucks at Respondent's fuel depot. Complaint was filed by the Environmental Protection Agency on March 2, 1973, against the Respondents alleging that:

1. Allis-Chalmers on August 25, August 26, September 7, 1972, and on other dates operated and controlled its fuel depot in such a manner as to violate Sections 12(a) and 12(d) of the Environmental Protection Act (hereinafter called Act) and operated and controlled said depot in such a manner as to violate Rules 203(a), 402, and 403 of Chapter Three: Water Pollution Regulations of the Illinois Pollution Control Board (hereinafter called Chapter Three). Contaminants were deposited into a drain at the diesel oil fuel depot. The contaminants ran from the drain pipe into an unnamed tributary of Klein Creek and finally flowed into Klein Creek in violation of the Act and Chapter Three.

2. Ryder Truck Rental, Inc., on August 28 and September 7, 1972, and on various other dates used the fuel depot in such a manner as to violate Sections 12(a) and 12(d) of the Act and used the depot in such a manner as to violate Rules 203(a), 402, and 403 of Chapter Three: Water Pollution Regulations of the Illinois Pollution Control Board. Ryder Truck Rental, Inc. participated in the discharge of contaminants into the drainage

facility on the Allis-Chalmers property. These contaminants flowed into an unnamed tributary of Kelin Creek and finally into Klein Creek in violation of the Act and Chapter Three.

A hearing was held on July 9, 1973. The Respondent Allis-Chalmers was represented by counsel Ronald R. Huntley, and the Respondent Ryder Truck Rental, Inc. was represented by Counsel John R. Whitman. At this hearing the following Stipulation of Facts was entered. Allis-Chalmers Corporation maintains a parts distribution facility at Carol Stream, Illinois, the premises mentioned in the Complaint. From this location, trucks are dispatched and deliver parts to various destination points. These trucks were leased to Allis-Chalmers by Ryder Truck Rentals, Inc. pursuant to a Truck Lease and Service Agreement. Under this agreement Ryder maintains and fuels these trucks on the Allis-Chalmers property at Carol Stream, Illinois. On Friday, August 25, 1972, heavy rains occurred at Carol Stream and surrounding areas, resulting in emergency flood conditions. Such flood conditions existed at the Allis-Chalmers facility until Sunday night, August 27. Because of the torrential rains, water had got into the underground fuel storage tanks existing on the Allis-Chalmers facility. The presence of this water in the underground fuel tanks was unknown to Allis-Chalmers on Sunday evening, August 27, 1972. During the day of August 27, Ryder began to receive reports that dispatched trucks were malfunctioning on the road and the origin of the difficulty appeared to be the presence of water in the gas tanks. At 1:00 a.m. Monday, August 28, an employee of Ryder Truck Rentals entered the Allis-Chalmers premises and discovered that recently fueled trucks, soon to be dispatched, had significant amounts of water in their gas tanks. To prevent damage to four trucks, the Ryder employee completely emptied the fuel and water admixture into a drainage basin in the center of the truck parking area. The employee took such action at his own initiative, without consulting with either Ryder or Allis-Chalmers. A total of 400 gallons of diesel oil was drained into the catch-basin. The drained fuel went into the unnamed tributary of the Klein Creek and finally was discovered in the Klein Creek on September 7, 1972. Allis-Chalmers learned of the discharge on Monday afternoon, August 28. Despite immediate unilateral efforts to absorb the "scum" by Allis-Chalmers, the oil was infact present in Klein Creek on September 7, 1972. On that date, an investigator of the Environmental Protection Agency visited the Allis-Chalmers facility and received the full cooperation of Allis-Chalmers. It is not claimed by the EPA that any animal, vegetable, or underwater life was damaged by Ryder or Allis-Chalmers. Allis-Chalmers had never before experienced a diesel oil spill or discharge on the premises.

Allis-Chalmers offered \$1000 as an appropriate penalty. Ryder Truck, Inc. offered \$2500. The Agency recommended that the Board accept the penalty offers made, but the Stipulation of Facts and Agreement was not made contingent upon the acceptance by the Board of these offers.

We find both Respondents guilty of violating Sections 12(a) and 12(d) of the Act. We find further that both Respondents violated Rules 203(a), 402, and 403 of Chapter Three. In assessing a reasonable penalty we are guided by various factors enunciated in past Board opinions. First, a past history of good faith compliance in operating a facility may operate to mitigate the penalty. See EPA vs. City of Marion, #71-25, #71-225; 2 PCB 701, 706 (October 28, 1971). Second, when the impact of the violation is nil or minimal, the penalty need not be as severe. See Freeman vs. EPA #71-78; 2 PCB 709, 711 (October 28, 1971). Third, the deliberateness of the violation is an important factor in assessing the penalty. See EPA vs. CPC International, Inc., #71-338; 5 PCB 541, 545 (October 3, 1972).

In a particular case, mitigating factors may be more than offset by aggravating factors which tip the scales towards a more severe penalty, rather than a less severe one. Furthermore, all factors do not carry the same weight, so that the Board's imposition of a penalty is not determined by simply adding up the number of factors on each side. Rather, the facts and circumstances of each particular case determine the balance to be struck.

The Board concludes that a penalty is proper in this case but that it should not be severe. Neither temporary nor lasting harm has been done to the environment. The difficulty was caused by an unexpected flood in a situation which the employee believed that he had the responsibility to act quickly. The Stipulation of Facts indicates that Allis-Chalmers has no history of violations. There was nothing in the facts concerning this point as to Ryder. The penalty to Ryder, however, should be more severe because it is directly accountable for the actions of its employees. Neither Respondent is guilty of deliberate violation of the Act, and the degree of fault is an important factor in assessing a penalty. See EPA vs. CPC International, Inc. #71-338; 5 PCB 541, 545 (October 3, 1972).

This Opinion constitutes the finding of fact and conclusions of law by the Board.

ORDER

1. Respondents must cease and desist from these violations of the Environmental Protection Act and the Pollution Control Board's Water Pollution Regulations of Illinois. Precautions to be taken shall include the distribution to all employees who regularly work at the facility of a written memo indicating what procedures shall be followed in the future to avoid the pollution of Klein Creek and its unnamed tributary when an admixture of diesel and water is found in the trucks' tanks or elsewhere on the premises. A copy of such instructions prepared by Allis-Chalmers

shall be filed with the Agency not later than 60 days after the Board's Order.

2. Respondent Allis-Chalmers shall pay to the State of Illinois by December 31, 1973, the sum of \$1000 as a penalty for violations found in this proceeding. Respondent Ryder Truck Rental, Inc. shall pay to the State of Illinois by December 31, 1973, the sum of \$2500 as a penalty for violations found in this proceeding. Penalty payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Order was adopted on the 15th day of November, 1973, by a vote of 5 to 3.



Christan L. Moffett, Clerk
Illinois Pollution Control Board