

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 71-289
)
VALLEY LINE COMPANY)

William J. Meyer, Jr., Assistant Attorney General, for the Environmental Protection Agency

Jerry G. Frederickson, Attorney for Valley Line Company

OPINION OF THE BOARD (by Mr. Kissel):

On September 28, 1971, the Environmental Protection Agency (the "Agency") filed a complaint with the Board alleging that the Valley Line Company, a corporation, ("Valley Line") violated Section 12(a) of the Environmental Protection Act (the "Act") and Sections 1.03(b) and (c) of SWB-14 in that it owned or controlled a barge on the Illinois River which discharged oil into that River. A hearing was held on the complaint in Havana, Illinois on November 29, 1971 before Thomas B. Kennedy, Hearing Officer.

Before discussing the events of the case, one procedural point must be dealt with. The Agency in its complaint alleged a violation of SWB-14, yet the discharge occurred, according to the complaint, in the Illinois River. SWB-14 covers only the intrastate waters of the state, not the designated interstate waters. The Illinois River is an interstate water and is governed by SWB-8. However, we do not feel that pleading the wrong regulation in this case is governed by the rule requiring adequate notice in pleadings as set forth in EPA v. Commonwealth Edison Company, PCB 70-4, decided February 17, 1971. There the Board dismissed a portion of the complaint insofar as it applied to a contaminant (sulfur dioxide) which was not specifically mentioned in the complaint. Here, however, while the wrong regulation was alleged, it was abundantly clear from the complaint that the alleged discharge of oil was to the Illinois River, and Regulations almost identical to Rules 1.03(b) and (c) found in SWB-14, are contained in SWB-8, which Regulation does cover the Illinois River. We feel, therefore, that notwithstanding the mistake in pleading, Valley Line had adequate notice as to the regulation which it had allegedly violated.

The facts in this case are relatively simple. Valley Line admits that it owned barge #MV 273, and that it had been loaded with #2 diesel fuel oil at Wood River, Illinois and delivered to its mooring station north of Havana on June 13, 1971. Actually, the mooring station was located near Quiver Island. The 190 x 50 foot barge contained oil which would be drawn by tugs operating on the Illinois River.

The oil on the Illinois River was first noticed by a resident of Havana who then called the U.S. Coast Guard in St. Louis. He noticed the oil about 1-1/2 miles south of Quiver Island where the barge was moored. Then, on June 15, 1971, a Coast Guard employee and an Agency employee took a boat north from Havana, the oil slick about 1/2 mile from Havana, and traced it to the barge #MV 273. No one was on the barge during the visit by the Coast Guard employee and the Agency employee. Both identified an underwater oil leak on the starboard side of the barge. This leak was the only one in the area and the oil slick previously described could be traced directly to it. Valley Line admitted that the leak had occurred and further stated that by 7 o'clock on the 15th of June, the leak had been temporarily repaired and the repairs were certified by the Coast Guard. While there is some dispute as to the quantity of oil lost, it was estimated that as much as 600 gallons reached the Illinois River. For purposes of our decision, it is not necessary to determine the exact amount of oil lost, but only that the oil was discharged and that it could be seen and traced over a mile downstream of the discharge.

The case is governed by our decision in a previous case, EPA v. Yetter Oil, PCB 71-246, decided November 22, 1971. There we held that the "uncontrolled discharge of oil" as had been described by the witnesses in that case was "water pollution" as contemplated by the Act. The facts in this case are parallel to those in Yetter Oil, supra. An uncontrolled discharge was proven, and it certainly had an effect on the Illinois River, covering a part of it for up to a mile and a half downstream (a strip about 25-30 feet wide starting at the bank of the River). The oil slick prevented the recreational use of the River because one witness testified that he didn't fish in the River as a result of the oil (R. 12).

We therefore find both a violation of Section 12(a) of the Act and Rules 1.03(b) and (c) of SWB-8 on the same basis as discussed in Yetter Oil.

For the violations, we feel that Valley Line should pay a penalty in the amount of \$1000. This is indeed a more serious violation than in the Yetter Oil case as it affects one of the major Rivers of Illinois. Valley Line will also be ordered to cease and desist from further violations of the Act and the Rules of SWB-8 in the operation of the barge.

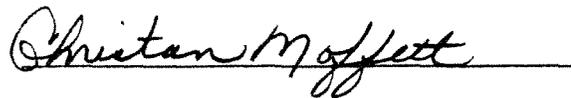
This opinion constitutes the findings of fact and conclusions of law of the Board.

O R D E R

After consideration of the testimony and the exhibits, the Board hereby orders the following:

1. Valley Line shall cease and desist from discharging any oil into the waters of the State which discharges shall result in a violation of the Act or the Regulations promulgated thereunder.
2. Valley Line shall pay to the State of Illinois, in penalty, the amount of \$1,000 for the violation of the Act and the applicable regulations as stated in the Board's opinion.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 6th day of January, 1972 by a vote of 4-0.

A handwritten signature in cursive script that reads "Christan Moffett". The signature is written in black ink and is positioned above a solid horizontal line.

