

ILLINOIS POLLUTION CONTROL BOARD
March 14, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-60
)
PIERCE WASTE OIL SERVICE, INC.,)
a Delaware corporation, and)
CENTRAL REFINING COMPANY,)
a Delaware corporation,)
)
Respondents.)

MR. JOSEPH F. MADONIA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

WOLFSON & PAPUSHKEWYCH (MR. MICHAEL McGRAW, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by W.J. Nega):

This matter comes before the Board on the April 26, 1983 Complaint brought by the Illinois Environmental Protection Agency (Agency).

After extensive discovery and numerous pre-hearing procedural matters had been disposed of, the Agency filed a Motion to Amend the Complaint and a First Amended Complaint on July 2, 1985.

On July 11, 1985, the Board entered an Order which referred the Agency's July 2, 1985 motion to the Hearing Officer for disposition.

A hearing on a proposed settlement agreement was held on November 18, 1985 at which no members of the public were present. (R. 2).

On January 3, 1986, the Agency filed a Motion to Amend the Complaint and a Motion for Leave to file its Second Amended Complaint.

In its January 3, 1986 motion, the Agency represented that "since the hearing in this case was held on November 18, 1985, and since Respondents have agreed to the filing of this Second Amended Complaint as part of a Settlement Agreement, Respondents are not disadvantaged because of surprise with the amendment of the First Amended Complaint".

Accordingly, on January 9, 1986, the Board entered an Order which granted the Agency's motion to amend the Complaint and granted the Agency leave to file its Second Amended Complaint.

Count I of the eight-count Second Amended Complaint alleged that, intermittently from April 17, 1980 until approximately June 15, 1983, Respondents Pierce Waste Oil Service, Inc. (Pierce Waste Oil) and Central Refining Company (Central Refining) have, alone and in combination with each other, caused air pollution by the emission into the atmosphere of odors and other contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human life, to plant life, to health and to property or which have unreasonably interfered with the enjoyment of life and property in violation of former Rule 102 of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.141) and Section 9(a) of the Illinois Environmental Protection Act (Act).

Count II alleged that, on various occasions since approximately January, 1981, Respondent Central Refining has caused or allowed the construction or modification of specified emission sources or air pollution control equipment (namely, its reboiler, Condenser System B, and Pipe Stills #4) without first obtaining the requisite Construction Permits from the Agency in violation of former Rule 103(a)(1) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.142) and Section 9(b) of the Act.

Count III alleged that, intermittently since approximately January, 1981 and continuing at least through 1982, Respondent Central Refining has caused or allowed the operation of its new emissions sources or new air pollution control equipment (i.e., its Reactor #2, Condenser Systems A and B, Contactor, and API Separator) without first obtaining the necessary Operating Permits from the Agency in violation of former Rule 103(b)(1) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.143) and Section 9(b) of the Act.

Count IV alleged that, intermittently since at least January, 1981 and continuing until approximately June, 1983, Respondent Central Refining has caused or allowed the operation of existing emission sources (i.e., its Reactor #1, Boiler B1, and Pipe Stills #1-3) without first obtaining the required Operating Permits from the Agency in violation of former Rule 103(b)(2) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.144) and Section 9(b) of the Act.

Count V alleged that, on various and intermittent dates from at least May, 1979 until approximately June 15, 1983 (including, but not limited to, August 21, 1979, December 5, 1979, May 11, 1981, June 26, 1981, January 28, 1982, April 12, 1982, May 24, 1982, and February 22, 1983), Respondents Pierce Waste Oil and Central Refining have caused or allowed oils and other

contaminants to be spilled or deposited on plant grounds and/or into lagoons, ponds, pits, and ditches so as to create a water pollution hazard in violation of Section 12(d) of the Act.

Count VI alleged that, on various dates from at least June, 1981 until at least May, 1982 (including, but not limited to, January 28, 1982 and April 12, 1982), Respondents Pierce Waste Oil and Central Refining caused or allowed facilities constituting treatment works to be used and operated without the requisite Operating Permits first being issued by the Agency in violation of former Rule 953(a) of Chapter 3: Water Pollution Regulations (now 35 Ill. Adm. Code 309.204) and Section 12(b) of the Act.

Count VII alleged that, on various dates from at least January 8, 1981 until approximately June 15, 1983 (including, but not limited to, June 8, 1981, April 12, 1982, May 24, 1982, and January 28, 1982), Respondents Pierce Waste Oil and Central Refining received waste materials at their existing solid waste management site without an Agency permit; modified the site without an Agency permit, and disposed of waste without an Agency permit in violation of former Rule 201 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201), former Rule 202 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.202), and former Rule 210 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.210) and Section 21(d) of the Act.

Count VIII alleged that, on various dates from at least June, 1981 until approximately September, 1982, Respondents Pierce Waste Oil and Central Refining delivered or accepted special wastes for disposal in Illinois without the necessary manifests in violation of former Rules 301, 501(A), 501(B), and 501(E) of Chapter 9: Special Waste Hauling Regulations (now 35 Ill. Adm. Code 809.301; 809.501(a); 809.501(b); and 809.501(e), respectively) and Section 21(d) of the Act.

The parties filed their Stipulation and Proposal for Settlement on February 27, 1986.

At all times pertinent to the Agency's Second Amended Complaint, Respondent Pierce Waste Oil Service, Inc. was a Delaware corporation duly licensed and authorized to do business in Illinois which owned and operated a used oil collection and storage facility (PWO facility) located at 1925 East Madison Street in Springfield, Sangamon County, Illinois. (Stip. 3).

Concomitantly, at all times pertinent to the Agency's Second Amended Complaint, Respondent Central Refining Company owned and operated a used oil re-refining and reclamation facility (CR facility) located at 2000 East Madison Street in Springfield, Sangamon County, Illinois. (Stip. 3).

The businesses conducted by the Respondents at the PWO facility and at the nearby CR facility consisted of the recycling and reuse of waste oil and similar waste materials, an activity that is specifically encouraged in Section 20(b) of the Illinois Environmental Protection Act (Act). (Stip. 3).

It is stipulated that: (1) Respondent Pierce Waste Oil ceased operating the PWO facility in February, 1983 and has not operated the PWO facility since that time; (2) Respondent Central Refining ceased operating the CR facility in February, 1983 and has not operated the CR facility since that date; and (3) on June 15, 1983, both Pierce Waste Oil and Central Refining "consummated the transfer and sale of all the realty, structures and equipment comprising the Pierce Waste Oil and Central Refining Facilities, to Moreco Energy, Inc., an Illinois corporation doing business in Illinois". (Stip. 3-4).

AIR POLLUTION VIOLATIONS

It is stipulated that, intermittently since approximately January, 1981 and continuing at least through 1982, Respondent Central Refining operated new emission sources (i.e., Reactor #2, Condenser Systems A and B, the Contactor and API Separator) at the CR facility without first obtaining the necessary Operating Permit from the Agency in violation of former Rule 103(b)(1) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.143) and Section 9(b) of the Act. (See: Count III of the Second Amended Complaint).

In reference to the required permits, the Agency has indicated that, on June 8, 1981, September 30, 1981, January 11, 1982, and May 19, 1982, Respondents Pierce Waste Oil and Central Refining did submit applications to the Agency for a permit to operate certain equipment at the CR facility (i.e., this equipment included Reactor #2, Condenser Systems A and B, the Contactor, and the API Separator). However, the Agency subsequently denied each of these applications and the Respondents did not appeal from these Agency permit denials. (Stip. 5).

Nonetheless, since approximately February, 1983, Respondent Central Refining has not operated its Reactor #2, Condenser Systems A and B, the Contactor and the API Separator. (Stip. 5). Moreover, the Agency issued an Operating Permit on December 7, 1984 to Moreco Energy, Inc. to allow authorized operation of the former Condenser System B. (Stip. 5).

It is also stipulated that, intermittently since about January, 1981 and continuing until approximately February, 1983, Respondent Central Refining operated certain existing emission sources (i.e., its Reactor #1, Boiler B1, and Pipe Stills #1-3) at its CR facility without first obtaining the required Operating

Permits from the Agency in violation of former Rule 103(b)(2) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.144) and Section 9(b) of the Act. (See: Count IV of the Second Amended Complaint).

The Agency has stated that, in reference to these required permits, on June 8, 1981, September 30, 1981, January 11, 1982, and May 19, 1982, Respondents Pierce Waste Oil and Central Refining submitted applications to the Agency for a permit to operate specified equipment at the CR facility (i.e., this equipment included Reactor #1, Boiler B1, and Pipe Stills #1-3). However, the Agency subsequently denied each of these applications and no appeal from this permit denial was taken by either of the Respondents. (Stip. 6).

Since approximately February, 1983, Respondent Central Refining has not operated any of the previously mentioned existing emission sources (namely, Reactor #1, Boiler B1, and Pipe Stills #1-3). The Agency issued an Operating Permit on December 7, 1984 to Moreco Energy, Inc. which allowed operation of former Pipe Stills #1-3 by that successor firm. (Stip. 6).

WATER POLLUTION VIOLATIONS

In reference to alleged water pollution violations, it is stipulated that, on various dates from approximately June, 1981 until July, 1982 (including January 28, 1982 and April 12, 1982), Respondents Pierce Waste Oil and Central Refining caused or allowed facilities constituting treatment works to be used and operated without the necessary Operating Permits first being issued by the Agency in violation of former Rule 953(a) of Chapter 3: Water Pollution Regulations (now 35 Ill. Adm. Code 309.204) and Section 12(b) of the Act. (See: Count VI of the Second Amended Complaint).

It is specifically admitted that the Respondents allowed the collection of waste water and runoff in a lagoon (which was located in the northeast area of the CR facility) and a cooling pond (which was located in the southern area of the CR facility). (Stip. 7). The Respondents then recovered oil for processing from the lagoon and cooling pond which were admittedly treatment works capable of causing or contributing to water pollution violations in the vicinity of the Pierce Waste Oil and Central Refining facilities from about June, 1981 until July, 1982. (Stip. 7).

The parties have stipulated that the Respondents eliminated the southern area cooling pond in approximately September, 1981 and later eliminated the northeast area lagoon in about July, 1982. (Stip. 8).

LAND POLLUTION VIOLATIONS

Because the Respondents stored and processed waste oils at the Pierce Waste Oil and Central Refining facilities, it is admitted that the facilities (and concomitant equipment) used by these Respondents during their processing and storage operations constituted an existing solid waste management site within the meaning of former Rule 201 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201). (Stip. 9).

Additionally, it is stipulated that the Agency granted Respondent Pierce Waste Oil an Operating Permit #1980-17-OP on May 5, 1981 to operate its solid waste management site. (Stip. 9). Special Conditions #1 and #5 of its Operating Permit #1980-17-OP read as follows:

"1. This facility shall be developed in accordance with Chapters 2, 7 and 9 of the Illinois Pollution Control Board Rules and Regulations;
...

* * *

5. Special wastes received at the site for recovery shall be transported to the facility utilizing the Agency's supplemental permit system and manifest system." ...

Despite the previously delineated Special Conditions #1 and #5 of its Operating Permit, Respondent Pierce Waste Oil admittedly received special wastes (i.e., waste oils) without possessing a valid Supplemental Permit from the Agency on twenty-four separate occasions between January 8, 1981 and June 8, 1981. (Stip. 9).

However, on February 10, 1982, the Agency issued Respondent Pierce Waste Oil a Supplemental Permit #1982-15. Special Condition #10 of this Supplemental Permit provided:

"10. Any modification to the facility, treatment process, types or amounts of wastes handled shall be subject to an application for supplemental permit for site modification submitted to this Agency."

Although Special Condition #10 of Supplemental Permit #1982-15 mandated that any modifications be preceded by an application to the Agency for appropriate authorization, in approximately April, 1982, the Pierce Waste Oil/Central Refining facilities were modified without the necessary notification to, or approval by, the Agency. At that time, the Respondents constructed a pit in order to hold a planned underground storage

tank, but did not file with the Agency an application for modification of their facilities pertaining to the underground storage tank pit or the treatment works. (Stip. 10).

The parties have stipulated that, in approximately July, 1982, the Respondent removed the treatment works and, in approximately August, 1982, the underground storage tank pit was removed. (Stip. 10).

PROPOSED SETTLEMENT AGREEMENT

The proposed settlement agreement provided that the Respondents admitted certain specified violations and agreed to pay a stipulated penalty of \$20,000.00 into the Illinois Environmental Protection Trust Fund in three installments.

Additionally, the parties have, in Item F on page 12 of the Stipulation, in effect, requested that the Board dismiss all counts of the Agency's Complaint, all counts of the First Amended Complaint, and Counts I, II, V, and VIII of the Second Amended Complaint with prejudice. (Stip. 10-13).

The Board believes that, in light of the proposed settlement agreement worked out between the parties, such a dismissal of the aforementioned counts of the Agency's various Complaints is reasonable and appropriate, and therefore will dismiss these counts as requested by the parties.

The parties have stipulated that, for the purposes of this proceeding only, Respondent Central Refining admits the violation alleged in Count III of the Agency's Second Amended Complaint in that, during the time period specified in the Stipulation of Facts, Respondent Central Refining operated Reactor #2, Condenser Systems A and B, the Contactor, and the API Separator at the CR facility without first obtaining the necessary Operating Permits from the Agency in violation of former Rule 103(b)(1) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.143) and Section 9(b) of the Act. (Stip. 10-11).

Additionally, Respondent Central Refining also admits the violations alleged in Count IV of the Agency's Second Amended Complaint in that, during the specified time period, it operated Reactor #1, Boiler B1, and Pipe Stills #1-3 without first obtaining the required Operating Permits from the Agency in violation of former Rule 103(b)(2) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.144) and Section 9(b) of the Act. (Stip. 11).

Moreover, Respondents Pierce Waste Oil and Central Refining admit the violations alleged in Count VII of the Agency's Second Amended Complaint in that, during the specified time period, they received special wastes without first possessing a valid

Supplemental Permit from the Agency and modified their facilities without first applying for the appropriate Supplemental Permit, thereby admittedly each violating former Rules 201 and 210 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201 and 35 Ill. Adm. Code 807.210, respectively) and Section 21(d) of the Act.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

As admitted in the Stipulation, the Board finds that Respondent Central Refining has violated former Rules 103(b)(1) and 103(b)(2) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.143 and 35 Ill. Adm. Code 201.144, respectively) and Section 9(b) of the Act. Additionally, as admitted in the Stipulation, the Board finds that Respondents Pierce Waste Oil and Central Refining have each violated former Rule 953(a) of Chapter 3: Water Pollution Regulations (now 35 Ill. Adm. Code 309.204); former Rules 201 and 210 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201 and 35 Ill. Adm. Code 807.210, respectively); and Sections 12(b) and 21(d) of the Act. The Respondents will be ordered to pay the stipulated penalty of \$20,000.00 into the Environmental Protection Trust Fund in three installments as specified in the items #4, #5, and #6 of the Board's Order in the instant case.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

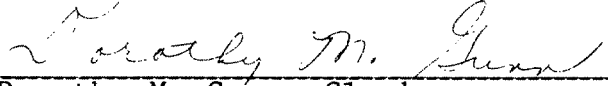
1. All counts of the Agency's Complaint, all counts of the First Amended Complaint, and Counts I, II, V, and VIII of the Second Amended Complaint are hereby dismissed with prejudice.
2. As admitted in the Stipulation, Respondent Central Refining Company has violated former Rules 103(b)(1) and 103(b)(2) of Chapter 2: Air Pollution Regulations (now 35 Ill. Adm. Code 201.143 and 35 Ill. Adm. Code 201.144, respectively) and Section 9(b) of the Illinois Environmental Protection Act.

3. As admitted in the Stipulation, Respondents Pierce Waste Oil Service, Inc. and Central Refining Company have each violated former Rule 953(a) of Chapter 3: Water Pollution Regulations (now 35 Ill. Adm. Code 309.204); former Rules 201 and 210 of Chapter 7: Solid Waste Regulations (now 35 Ill. Adm. Code 807.201 and 35 Ill. Adm. Code 807.210, respectively) and Sections 12(b) and 21(d) of the Illinois Environmental Protection Act.
4. Within 35 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, jointly and severally pay the stipulated first installment of \$10,000.00 (on a total penalty of \$20,000.00) which is to be sent to:

Environmental Control Division
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706
5. Within 90 days of the date of this Order, the Respondents shall pay the stipulated second installment of \$5,000.00 (on a total penalty of \$20,000.00) in the same manner and fashion as the first installment payment as delineated in item #4 of this Order.
6. Within 180 days of the date of this Order, the Respondents shall pay the stipulated third installment of \$5,000.00 (on a total penalty of \$20,000.00) in the same manner and fashion as the first installment as delineated in item #4 of this Order. Accordingly, the timely completion of the payment of the stipulated third installment shall result in the entire stipulated penalty of \$20,000.00 being paid in full.
7. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on February 27, 1986, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14th day of March, 1986 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board