

ILLINOIS POLLUTION CONTROL BOARD
October 30, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-236
)
 KANEY TRANSPORTATION, INC. and)
 KTI, INC.)
)
 Respondents.)

DOUGLAS P. KARP, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

FREDERICK T. BRANDT AND CURTIS D. WORDEN OF CURTIS D. WORDEN, LTD. APPEARED ON BEHALF OF RESPONDENTS.

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

This matter comes before the Board on the Complaint of five Counts filed by the Environmental Protection Agency (Agency) on August 30, 1978, as amended April 19, 1979. Respondents Kaney Transportation, Inc. and KTI, Inc., both Illinois corporations, were charged with several violations of the Environmental Protection Act (Act) and of the Board's Chapter 3: Water Pollution (Chapter 3) regulations arising out of their truck washing operations. Hearing was held on this complaint on March 21, 1980 at which testimony of 3 citizens of Rockford as well as of the parties was received. Following this hearing, the parties developed a Stipulation and Proposal for Settlement. This Stipulation was presented at a hearing held July 29, 1980, which no members of the public attended, and was filed with the Board for review on July 30, 1980.

KTI, Inc. (KTI) is a holding company whose sole subsidiary is Kaney Transportation, Inc.; the corporations both have the same directors, officers, and owners. Kaney operates from a site in the City of Rockford, Winnebago County. The nature of Kaney's business is the transportation of liquids and gasses in bulk. These include gasoline, propane, fuel oil, asphalt, resins, varnishes and latexes (Stip. 1-2).

The Complaint charges Kaney with I) discharging wastewater into a water of the state without an NPDES permit from October, 1977 to April, 1979 in violation of Sections 12(a), (b) and (f) of the Act, and Rule 901 of Chapter 3, II) construction and

modification of an existing treatment works, sewer, or wastewater source without a construction permit from October, 1974 to April, 1979 in violation of Sections (a) and (b) of the Act and Rule 951, III) violation of water quality standards for a) maximum concentrations of phenols and fluoride, and b) freedom from unnatural sludge, bottom deposits, floating debris, odors, unnatural colors and turbidity from April, 1972 until April, 1979, in violation of Section 12(a) of the Act and Rules 203(a) and (f) and 402, IV) operation of a treatment works without a certified operator from July, 1973 to April, 1979, in violation of Section 12(a) of the Act and Rule 1201, and V) operation of a treatment works without a permit from October, 1974 to April, 1979, in violation of Sections 12(a) and (b) of the Act and Rule 953. The stipulated facts "offered in support" of these allegations are as follows, except that the Board has referred to citizen witnesses by name.

From January, 1974 until approximately March, 1979 the interior of the holding tanks of trucks carrying certain of the specified substances, as well as the trucks' exterior were washed on the Rockford site. The washing process employed a special "spinner" device (since removed from the site) and involved use of hot water, caustic soda and solvent. A weekly average of 300 gallons of wastewater was so generated. Since March, 1979, only the exterior of trucks has been washed on-site, interior cleaning being contracted for with commercial enterprises. The amount of wastewater generated by this exterior washing was not stipulated (Stip. 1-3).

Wastewater generated by the cleaning process passed through a floor drain in a maintenance building, into an underground drain pipe, and finally into a holding lagoon about 100 yards south of the building. The lagoon, approximately 100 feet long, 100 feet wide, and 8 feet deep, is about 100 yards away from a stream (stream) which is tributary to the south fork of Kent Creek, which is tributary to the Rock River. This stream flows into the privately-owned "Zander" pond, about 1200 feet downstream from the lagoon, enroute flowing onto or adjacent to property owned by other citizens, including the Traum family (Stip. 2-4, Ex. A, B).

It was stipulated that Kaney employees were to observe the lagoon, and when it was full, to pump the accumulated wastes into a tank truck for hauling to and disposal by the Rockford Sanitary District. However, sludge of a depth of 4-5 feet was allowed to accumulate in the lagoon (Stip. 2-3).

The unusually heavy and drifting snows of the winters of 1976-1977 and 1978-1979 inhibited the view of and access to the lagoon by Kaney employees (Stip. 2, 3). Truck washing did not stop during these winters. Wastewater was allowed to flow into and onto the lagoon beneath the drifted snow. In February, 1977 and 1978 Kaney President Robert Higgins noticed that wastes from the lagoon had overflowed into the adjacent Kaney cornfield. Citizen witnesses Vittore, Faulkner, and Traum testified that in February, 1977, April, 1978, and on other unspecified occasions, they had each

observed wastes overflowing the lagoon, draining across the cornfield, and discharging into the stream. Each also testified that the stream bearing Kaney waste passed through or by their downstream properties. The liquid waste was said to have a reddish, rusty, oily color which discolored the stream and caused it to give off unpleasant, sickening odors (Stip. 5-6) and otherwise to have created a nuisance.

Agency witness Jack Adam verified the testimony concerning existence of overflows and downstream stream and pond discoloration on February 22-23, 1977 and April 25, 1978. He additionally observed direct Kaney discharges into the ground on the April date. Analyses of samples collected by Mr. Adam on each date showed phenols in excess of 0.1 mg/l (Ex. C-0) and fluoride in excess of 1.4 mg/l (Ex. L-0) (Stip. 6-7).

Finally, Kaney specifically admitted to having operated the lagoon without an operating permit or certified operator, and to have raised the level of the south rim of the lagoon in fall, 1978 without obtaining a construction permit.

The parties' proposed settlement would require Respondents' to "immediately, if it has not already been done," dredge and scrape the lagoon and to properly dispose of all wastes and contaminated soil, if such has not already been done. Thereafter, continued scraping and soil sampling of the lagoon floor is to continue until concentrations of enumerated pollutants do not exceed background levels. Once these levels are met, Respondents are to submit a lagoon design and applications for necessary permits, to modify the lagoon in specified ways once the permit is granted, and thereafter to operate the lagoon in proper fashion. The parties have stipulated to payment of a penalty of \$3,000.

The Board finds, based on the facts stipulated as developed at hearing, that Kaney and KTI have violated the Act and Chapter 3 as alleged in the Complaint through and until July 29, 1980. The compliance program as developed by the parties is satisfactory to the Board.

In considering the stipulated penalty in light of Section 33(c), the Board notes the high degree of injury to and interference with the use enjoyment of the property of downstream land owners. However, in view of the fact that Kaney discontinued interior truck washing a month before this enforcement action was brought, and that some of the problems were brought about by severe winter weather conditions, the Board will approve the penalty of \$3,000. The Board therefore finds the Stipulation and Proposal for Settlement acceptable pursuant to Procedural Rule 331 and Section 33(c) of the Act.

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

ORDER

1. Respondents Kaney Transportation, Inc. and KTI, Inc., are hereby found to have violated Sections 12(a), (b), and (f) of the Environmental Protection Act, and Rules 203(a) and (f), 402, 901, 951 and 953 of Chapter 3: Water Pollution.

2. Within 45 days of the date of this Order, Respondents shall, by certified check or money order payable to the State of Illinois, pay a stipulated penalty of \$3,000.00 to be sent to:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

3. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed July 30, 1980, which is incorporated herein as if fully set forth.

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 30th day of October, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board