

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1982

COUNTY OF PEORIA, )  
A Body Politic and Corporate, )  
 )  
Complainant, )  
 )  
v. )  
 )  
BACON'S FARM, Ltd., )  
 )  
and ) PCB 80-38  
 )  
JOELL ALLEN, )  
Manager, Second Chance, )  
 )  
and )  
 )  
STEVE CORICH, )  
Manager, Second Chance, )  
d/b/a "Second Chance," )  
 )  
Respondents. )

INTERIM ORDER OF THE BOARD (by J.D. Dumelle):

On December 21, 1981 the County of Peoria filed a motion to compel compliance with the Board's February 19, 1981 Order in this matter. No response to that motion was filed until January 20, 1982 and that response was not accompanied by a motion to file instanter, despite its being filed three weeks late. However, apparently due to inadvertence, no proof of service accompanied the County's December 21 filing (now cured), and since the response was filed prior to the matter coming before the Board for decision, the Board will consider it.

The County alleges that Second Chance has failed to prepare and file a sufficient noise study pursuant to the February 19, 1981 Order in that the submitted report does not include recommendations for attaining compliance, copies of test data referred to in the report, or an abatement plan. It further alleges that this was despite repeated requests for additional materials, and that such conduct shows that Second Chance has not acted in good faith. Finally, the County alleges that Second Chance continues to emit unlawful levels of sound. It therefore requests that Second Chance be compelled to supply further information and that a penalty be imposed for its failure to comply in a timely manner and act in good faith.

Second Chance, on the other hand, contends that it did in fact file a timely and sufficient report and that it has already performed all of the work recommended by the consultant to attain compliance.

If all had proceeded according to the Board Order in this matter, Second Chance would have hired a consultant in response to the Order and submitted a detailed study of the noise problem, including all research, recommendations and an abatement plan to the Illinois Environmental Protection Agency (Agency), within 30 days of the February 19, 1981 Order and the Agency would have made recommendations to the consultant and Second Chance within 20 days thereafter. Finally, Second Chance would have acted upon those recommendations in good faith.

That, however, was not the course of events. Instead of hiring a consultant in response to the Board Order, Second Chance apparently relied upon a report which had been prepared even before a settlement was reached in this matter. It then did file a timely "Second Chance Agreed Settlement Report" on March 11, 1981 which is dated January 16, 1980 (though the Board assumes that it should be "1981") which not only discusses testing and makes recommendations for compliance, but also indicates that all recommended repairs were in fact completed on July 22, 1980, more than five months prior to the filing of the Stipulation of Facts and Agreed Settlement of this matter, and nearly six months prior to the Board's decision. Second Chance took nearly the full 30 days allowed for submittal of this report to the Agency on March 18, 1981.

Next, the Agency failed to respond to anyone concerning the sufficiency of that report. The County apparently contacted the Agency concerning this and discovered that due to budgetary and staffing cuts, the Agency would probably not be able to conduct further tests (see Motion for Extension, July 12, 1981). However, nothing was alleged concerning the Agency's ability to make recommendations as to the sufficiency of the report. The record also gives no indication of whether the noise tests were actually conducted by the County.

Second Chance, on the other hand, contends that due the Agency's failure to respond "one must conclude that the Illinois Environmental Protection Agency is satisfied that the Consultant's report has met the requirements of this Board, and further that the implementation of the consultant's recommendations have eliminated any violation." Why one "must conclude" that is puzzling in light of the County's July 12 allegation that several complaints had been received by the attorney for the County and the County's desire to conduct further tests.

A final complicating factor in this matter is that the Agency is not a party to this action and, therefore, cannot be ordered to file any recommendation. However, the Board

accepted the agreed settlement on the basis that the Agency would act as a neutral overseer of the compliance process. The Agency had represented its willingness to do so.

The present state of this proceeding appears to be that the County is not satisfied that it has enough information to determine whether the submitted study is sufficient and, therefore, desires more data. Second Chance indicates that it has made good faith efforts at compliance, thereby complying with the February 19 Order. The Agency has not participated and its failure to do so has rendered it impossible for Second Chance to fully comply with that Order. It has, however, recently indicated its willingness to participate.

The Board's intent in this proceeding has been to find a method for insuring compliance as expeditiously as possible, and that remains its intent. The Board does not condone Second Chance's reliance upon unilateral actions taken prior to the entry of the Board's Order as constituting compliance with that Order or upon its after-the-fact conclusion that Agency inaction serves as affirmance of its actions. The Board also fails to understand the County's lengthy delay in moving to compel compliance.

Therefore, the Board grants the County's motion to compel in part, but will not impose a penalty at this time for failure to comply, and hereby orders:

1. That within 14 days of the date of this Order Second Chance furnish the Board, the Agency and the County with all further information and data to which it has access and which has not been previously submitted concerning noise testing before and after the abatement measures were taken;
2. That within 14 days of the date of this Order the County furnish any and all information and data to which it has access, and which has not been previously submitted, to Second Chance, the Agency, and the Board.
3. That within 45 days of the date of this Order the Agency, the County, and Second Chance submit to the Board comments upon the present state of compliance by Second Chance with applicable Board regulations and any recommendations as to further actions to be pursued and any penalty to be assessed, if appropriate.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 4<sup>th</sup> day of February, 1982 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board