

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 1981

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 80-87  
 )  
MISSOURI-PACIFIC RAILROAD COMPANY, a )  
Delaware Corporation, and INTERNATIONAL )  
MINERALS & CHEMICAL CORPORATION, a New )  
York Corporation, )  
 )  
Respondents. )

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

WALKER AND WILLIAMS, ATTORNEYS AT LAW (MR. GORDON MAAG, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENT MISSOURI-PACIFIC RAILROAD COMPANY.

MR. PATRICK O. BOYLE, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT INTERNATIONAL MINERALS & CHEMICAL CORPORATION.

OPINION AND ORDER OF THE BOARD (by N.E.Werner):

This matter comes before the Board on the April 23, 1980 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). Count I of the Complaint alleged that, on March 29, 1979 at approximately 1 P.M., a derailment of the Missouri-Pacific Railroad Company's railroad car on the improperly maintained tracks of a rail spur owned by the International Minerals & Chemical Corporation ("IMC") resulted in the discharge of about 152,000 pounds of ammonium nitrate into Wolf Lake in Union County, Illinois, thereby causing water pollution in violation of Section 12(a) of the Illinois Environmental Protection Act ("Act").

Count II alleged that IMC and the Missouri-Pacific Railroad Company ("Railroad") have violated the water quality standard for ammonia nitrogen (as N) from March 29, 1979 until April 6, 1979 in violation of Rules 203(f) and 402 of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and Section 12(a) of the Act.

Count III alleged that IMC's plant discharged effluents from four specified outfalls which violated the effluent discharge limitations in its NPDES Permit for BOD<sub>5</sub>, suspended solids, and pH

in violation of Rules 404(f), 408(a), 410(a), and 901 of Chapter 3 and Sections 12(a) and 12(f) of the Act.

After extensive discovery took place, a hearing was held on December 17, 1980 at which no members of the public were present. On December 9, 1980, a Statement of Stipulated Settlement between the Agency and the Railroad was filed. Concurrently, a separate Statement of Stipulated Settlement between the Agency and IMC was also filed on December 9, 1980.

The Railroad owns a set of railroad tracks which are located about 1/4 mile west of IMC's plant in Union County, Illinois. A rail spur runs from these tracks east to the IMC plant. IMC owns this rail spur (except for the first 150 feet immediately east of the tracks). While the Railroad was backing the railroad car containing ammonium nitrate onto the track at a point in the rail spur owned by IMC on March 29, 1979, the derailment occurred.

IMC operates "a plant which manufactures explosives and is located East of Illinois Route 3 approximately one mile north of the town of Wolf Lake in Union County, Illinois". (IMC Stip. 2). The rail spur enters IMC's "plant from the West and also crosses over Wolf Lake", a navigable Illinois water which "is a long narrow lake that was formed by an oxbow of the Big Muddy River." (IMC Stip. 2-3).

The parties have stipulated that:

"...The derailment occurred as a result of gravel becoming tightly compacted against the outer rail of the track on the spur and completely covering the rail for a distance of approximately fifty feet, and this coupled with a one inch reverse elevation of the track at a curve in the track at the point of derailment made it impossible for the wheels of the railroad car to traverse the curve... The gravel...came from a road used for car and truck traffic that runs approximately parallel and adjacent to the spur and is used by IMC for access to the plant...A derailment of the railroad car containing ammonium nitrate occurred at a point in the spur owned by IMC and just east of the bridge which crosses Wolf Lake...This derailment resulted in the discharge of 152,000 pounds of ammonium nitrate from the railroad car into Wolf Lake...The discharge of ammonium nitrate into Wolf Lake caused or tended to cause an alteration of the chemical properties of the water in the Lake that was likely to render such water harmful, detrimental or injurious to fish and other aquatic life in that said discharge caused the water quality standard for ammonia nitrogen (as N) of 1.5 mg/l to be exceeded in the Lake for more than one month." (Railroad Stip. 2-3).

In order to ascertain "the possible effects of the spilled material on the Lake," IMC monitored the levels of dissolved oxygen,

ammonia nitrogen (as N), pH and temperature in Wolf Lake after the derailment. (IMC Stip. 3).

To "reduce the amount of gravel deposited on the rail spur as a result of the vehicular traffic", IMC (1) "paved the gravel roadway East of the bridge for a distance of approximately 30 feet" in October, 1979; and (2) "paved the gravel roadway West of the bridge for a distance of approximately" 30 feet in May, 1980. (IMC Stip. 3).

It is stipulated that "Wolf Lake is or was the home for the bantam sunfish and the bluehead shiner". (IMC Stip. 3). The bantam sunfish, Lepomis symmetricus, has been designated a threatened species, while the bluehead shiner, Notropis hubbsi, whose only known habitat in Illinois is Wolf Lake, has been designated an endangered species. (See: IMC Exhibit A and IMC Stip. 3).

IMC, which does not have third-stage treatment lagoons, must meet the effluent concentration limits specified in its NPDES Permit No. IL 0000256. In its Statement of Stipulated Settlement, IMC has admitted that, during specified time intervals between 1978 and 1980, it failed to meet the effluent limitations for BOD<sub>5</sub>, suspended solids, and pH in its wastewater discharges from specified outfalls in violation of Rules 404(f), 408(a), 410(a), and 901 of Chapter 3 and Sections 12(a) and 12(f) of the Act. (IMC Stip. 4-7).

The proposed settlement agreement between the Agency and IMC provides that IMC agrees to: (1) cease and desist from further violations; (2) "maintain the condition of the rail spur by preventing any gravel or other material (not including rain, snow, sleet, slush, and ice) from being deposited on or adjacent to the rails of the rail spur so as to prevent safe passage of railroad cars or engines across the track"; (3) fund one-half of the total cost of a study of Wolf Lake (total cost = \$5,500.00) which will be conducted by the Zoology Department of Southern Illinois University at Carbondale in accordance with a specified Study Proposal (See: IMC Exhibit A); and (4) pay a stipulated penalty of \$5,000.00 (IMC Stip. 8-9).

Additionally, the Agency, in the Statement of Stipulated Settlement between IMC and the Agency, has requested that the Board amend Count III of the original Complaint to include all violations which are set out in the settlement agreement. The Board hereby grants the Agency's motion to amend Count III of the Complaint. Furthermore, the parties have requested in their Statement of Stipulated Settlement that the Board order the Agency "to modify IMC's NPDES permit to allow 30 day average discharges from outfalls 001, 002, 003, and 004 of 10 mg/l of BOD<sub>5</sub> and 12 mg/l of Suspended Solids." (IMC Stip. 9).

The Statement of Stipulated Settlement between the Agency and the Railroad provides that the Railroad agrees to fund the other one-half of the total cost (total cost = \$5,500.00) of the study of Wolf Lake which will be conducted by the Zoology Department of Southern Illinois University at Carbondale. (Railroad Stip. 5-6). Additionally, the proposed settlement agreement between the Agency and the Railroad provides that:

"...The Railroad agrees to keep in effect at all times a General Order which requires that prior to any railroad cars being delivered at the plant, that the train and all cars will stop at a point on the west side of the bridge which crosses Wolf Lake, and an employee of the Railroad will walk across the bridge and around the far side of the bridge and inspect the rail spur to make sure that it is clear from any gravel and any other material (not including rain, snow, sleet, slush or ice) which would prevent the safe passage of railroad cars and an engine across the track. If the way is seen to be clear, then movement may proceed. If the rail spur is seen to be obstructed, then the Railroad will contact IMC personnel and inform them of this fact and then and only after the rail spur has been cleared by IMC will the Railroad move railroad cars over the spur." (Railroad Stip. 5)

In evaluating these enforcement actions and proposed settlement agreements, 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. The Board finds both of the stipulated agreements acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that IMC has violated Rules 404(f), 408(a), 410(a), and 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a) and 12(f) of the Act. The Board will order IMC to cease and desist from further violations and pay the stipulated penalty of \$5,000.00. Additionally, the Board shall order the Missouri-Pacific Railroad Company to comply with all of the provisions of the Statement of Stipulated Settlement entered into between the Agency and the Railroad.

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. International Minerals & Chemical Corporation has violated Rules 404(f), 408(a), 410(a) and 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.

2. IMC shall cease and desist from all further violations of the above mentioned provisions of the Board's Water Pollution Regulations and the Act.

3. Within 60 days of the date of this Order, the International Minerals & Chemical Corporation shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$5,000.00 which is to be sent to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

4. IMC shall comply with all the terms and conditions of the Statement of Stipulated Settlement between IMC and the Agency filed December 9, 1980, which is incorporated by reference as if fully set forth herein.

5. The Agency's motion to amend Count III of the Complaint to include all violations set out in the Statement of Stipulated Settlement between IMC and the Agency is hereby granted.

6. The Agency is hereby ordered to modify IMC's NPDES Permit to allow 30 day average discharges from outfalls 001, 002, 003, and 004 of 10 mg/l of BOD<sub>5</sub> and 12 mg/l of suspended solids. This modification shall not affect the pending request of IMC to eliminate requirements on suspended solids, BOD<sub>5</sub>, and phosphorus from outfalls 001, 002, 003, and 004, or the request to eliminate BOD<sub>5</sub> and phosphorus requirements from outfall 005.

7. The Missouri-Pacific Railroad Company shall comply with all the terms and conditions of the Statement of Stipulated Settlement between the Agency and the Railroad filed December 9, 1980, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 19<sup>th</sup> day of February, 1981 by a vote of 5:0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board