

ILLINOIS POLLUTION CONTROL BOARD

November 18, 1999

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 93-191
	)	(Enforcement - UST)
ESTATE OF LLOYD WIEMANN and	)	
CHERYL HALBROOKS,	)	
	)	
Respondents.	)	

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ESTATE OF LLOYD WIEMANN,	)	
	)	
Cross-Complainant,	)	
	)	
v.	)	PCB 93-191
	)	(Enforcement - UST)
CHERYL HALBROOKS,	)	
	)	
Cross-Respondent.	)	

ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board on several motions. Below, the Board rules on three motions of Cheryl Halbrooks (C. Halbrooks) and two motions regarding Lloyd Wiemann d/b/a Lloyd Wiemann Ice & Fuel (Wiemann). The Board also, on its own motion, dismisses Texaco Refining and Marketing, Inc. (TRMI) and Eugene Halbrooks (E. Halbrooks) from this proceeding.

C. HALBROOKS' MOTIONS

Motions to File *Instante* and to Dismiss

On August 10, 1999, the State filed an amended complaint against C. Halbrooks, alleging violations of the Board's underground storage tank regulations. The State asks the Board to order C. Halbrooks to cease and desist from further violations and to pay civil penalties. In her October 12, 1999 motion to dismiss, C. Halbrooks asserts that the State's action against her was discharged in bankruptcy. The State filed a response on October 21, 1999, in which it opposes the motion to dismiss.

On November 8, 1999, C. Halbrooks moved the Board for leave to file *instantly* a reply to the State's response to her motion to dismiss. In her motion, C. Halbrooks asserts that her reply clarifies misstatements of bankruptcy law in the State's response. The State filed an objection to this motion on November 16, 1999. Without addressing C. Halbrooks' assertion, the Board grants her motion to file *instantly* a reply.

With respect to the motion to dismiss, even assuming that the State had a prepetition claim under federal bankruptcy law and that C. Halbrooks received a discharge in a Chapter 7 bankruptcy, Section 523(a)(7) of the Bankruptcy Code (11 U.S.C. § 523(a)(7)) excludes from discharge "debt . . . for a . . . penalty . . . payable to and for the benefit of a governmental unit, . . . [that] is not compensation for actual pecuniary loss . . . ." The State's request for civil penalties under Section 42 of the Environmental Protection Act (415 ILCS 5/42 (1998)) falls within this exclusion and therefore survives any Chapter 7 bankruptcy discharge that C. Halbrooks may have received. See Durham Inland Wetlands & Watercourses Agency v. Jimmo (*In re Jimmo*), 204 B.R. 655, 658-660 (Bankr. D. Conn. 1997) (civil penalty for violation of state wetlands law not dischargeable in Chapter 7 bankruptcy because of Section 523(a)(7)). The Board therefore denies C. Halbrooks' motion to dismiss the State's action.

Because of this ruling, unless the matter is otherwise dismissed or settled, C. Halbrooks must proceed to hearing to defend against alleged violations and penalties. Accordingly, the Board need not rule at this time on whether the other relief that the State seeks has been discharged in bankruptcy.

#### Motion to Extend Deadline

In its September 23, 1999 order, the Board granted each party to this proceeding 45 days (*i.e.*, until November 8, 1999) to file any complaint against any of the parties. On November 3, 1999, C. Halbrooks moved the Board to extend this deadline for her. Specifically, C. Halbrooks asks that the Board extend this deadline to seven days after the Board rules upon her motion to dismiss the State's amended complaint.

The Board's September 23, 1999 order was explicit. The parties had 45 days to file any complaints, without exception. In setting this deadline, the Board was aware that C. Halbrooks may file a motion to dismiss. In fact, in the same order, the Board noted that C. Halbrooks may file motions in response to the State's amended complaint. C. Halbrooks could have filed a complaint within the 45-day deadline, as did the Estate of Lloyd Wiemann (Estate).<sup>1</sup> C. Halbrooks chose not to do so. The Board denies C. Halbrooks' motion to extend this deadline.

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<sup>1</sup> On November 8, 1999, the Estate filed a cross-complaint against C. Halbrooks.

### MOTIONS REGARDING WIEMANN

On November 8, 1999, the law firm of Hodge & Dwyer filed a motion suggesting the death of Lloyd Wiemann. The Board grants the motion. On the same date, the Estate moved the Board to substitute the Estate as a respondent for Wiemann in this proceeding. The motion states that Wiemann died on November 6, 1998, and that the executrix of the Estate has authorized the substitution of the Estate as a party to this proceeding. The Board grants the Estate's motion.

### TRMI AND E. HALBROOKS

Finally, the Board noted in its September 23, 1999 order that if it did not timely receive any complaints against TRMI and E. Halbrooks, the Board, on its own motion, would dismiss them. The Board has received no such complaints and therefore dismisses TRMI and E. Halbrooks from this proceeding.<sup>2</sup>

### CONCLUSION

The Board denies C. Halbrooks' motions to dismiss the State's amended complaint and to extend the deadline for her to file any complaint. The Board grants the motion suggesting the death of Lloyd Wiemann and the motion to substitute the Estate as a respondent in this proceeding. In addition, the Board dismisses TRMI and E. Halbrooks.

The Board notes that the hearing officer has scheduled a hearing in this matter for April 24 and 25, 2000. Especially in light of the considerable age of this case, unless the Board has dismissed this matter or the parties have settled, the parties must be prepared for hearing on these dates.

### ORDER

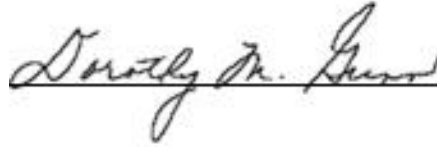
1. The Board grants C. Halbrooks' motion for leave to file *instante* a reply.
2. The Board denies C. Halbrooks' motion to dismiss the State's action against her.
3. The Board denies C. Halbrooks' motion to extend the deadline for her to file any complaint in this proceeding.
4. The Board grants the motion suggesting the death of Lloyd Wiemann and the motion to substitute the Estate as a respondent in this proceeding.
5. The Board dismisses TRMI and E. Halbrooks from this proceeding.

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<sup>2</sup> The Board has amended the caption of this case to reflect its rulings in this order. All future filings, for the time being, must reflect the caption of this order. The Board may further change the caption pending its ruling on the Estate's cross-complaint.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of November 1999 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board