

ILLINOIS POLLUTION CONTROL BOARD  
June 18, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 74-471  
 )  
 WILFORD E. ("ERNIE") JOHNSON and )  
 NORMA I. JOHNSON, d/b/a BYRON )  
 SALVAGE, )  
 )  
 Respondents. )

INTERIM ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a Motion for Entry of Interim Consent Order filed by the Environmental Protection Agency (Agency) on June 14, 1976. The procedural history of this matter is somewhat complex, with Interim Orders having been entered by the Board on July 10, August 7, September 4, September 18, October 16, November 6, November 26 and December 4, 1975, and March 11, 1976, and need not be fully set out here. The parties now wish us to enter an Interim Order, "in no manner . . . intended to delay or alter the outcome of the present case," which will purportedly allow further testing and studies on the realty which is the subject of the case, the results of which will be provided to the Board if they have any "significant bearing on any future Board Order."

This matter has now been before the Board for a protracted period; Respondents have been added and subsequently dismissed, a Count in the Amended Complaint has been dismissed, and there have been several continuances. At the February 17, 1976 hearing in the matter Complainant and the remaining Respondents orally entered a fact Stipulation which purportedly provides the Board with an adequate basis for decision in this case, on which subject we note the following:

1. The Attorney General specifically made Complainant's participation in the Stipulation contingent on the receipt of certain documentation from Respondents and additional communication to the Board by the Attorney General, (R. 29, 30). The Board has received nothing further on that subject, although Briefs have been received from both Complainant and Respondents.

2. The matters in that Stipulation on the subject of § 33(c) of the Environmental Protection Act indicate (without now deciding on the subject), that Respondents may in fact be "judgement proof" to the extent that any of the remedies requested by Complainant may, if included in a future Board Order, be an exercise in futility, (R. 26-29). None of the parties briefed, or even discussed, the possibility that the Agency itself might, in an appropriate action, be held responsible for the implementation of such remedies. Yet ¶ 1(e) of the proposed Consent Order would permit such remedies to be performed by the Agency. Although we do not decide on such issues, the intent of the parties with regard to them is not clear.

The Board's function goes beyond the mere imposition of liability in cases such as these, and includes finding with reasonable assurance that pollution problems such as those admitted to in the aforementioned fact Stipulation will be abated. We shall for that reason allow the Interim Consent Order proposed by the parties, for study or for such abatement measures as either of the parties may find appropriate.

We shall not, however, allow the one-year period requested in the Attorney General's Motion. We shall allow the Motion in part, granting 90 days for the additional studies or other activities contemplated by the parties.

We shall in addition require the submission within said 90-day period of further pleadings by the parties on the issues raised above, and ask the parties to provide additional specific, detailed information on the subject of what is needed for abatement; and, contingent on any Board decision on the issue of liability for the performance of such abatement, the likelihood of performance of such abatement activities as are determined to be necessary. In the absence of further evidence concerning a final resolution of this case by the end of that 90-day period, the Board will decide the case on the merits of the record before it.

The following Interim Consent Order is entered, effective immediately:

1. The Agency, its employees, contractors or anyone under its direct supervision or control, shall have the right, for a period not exceeding ninety (90) days from the date of entry of this Consent Order, with respect to a parcel of property owned and/or operated by the Johnsons located on Razorville Road, Byron, Illinois, and known commonly as the "Byron Salvage Yard," to enter upon such property for the following purposes:

- (a) to obtain soil and surface and ground-water sampling;
- (b) to take photographs;

- (c) to drill monitoring wells if necessary and sample said wells on a regular basis;
  - (d) to perform any additional work that might be necessary to determine the nature and extent of cyanide and heavy metal contamination on or from the site; and
  - (e) to remove, treat, contain or otherwise act upon any materials which might be causing or contributing to cyanide or heavy metal contamination on or from the site.
2. To accomplish such purposes, the Johnsons shall:
- (a) allow access to the site at all times for Agency-related activities. This includes opening the gate to the site and removing obstacles to allow passage of vehicles or equipment.
  - (b) provide information as soon thereafter as requested, with respect to the location of known areas of buried barrels and the number of such barrels and areas where tank truck discharges may have occurred;
  - (c) provide what other information as may be necessary for the Agency's purposes;
  - (d) notify any potential buyer or successor in title of this agreement and not to voluntarily pass title without it being subject to this agreement.
3. The Agency shall:
- (a) notify the Johnsons whenever possible of visits to the site;
  - (b) inform the Johnsons of substantially extensive work that will be performed at the site;
  - (c) preserve, whenever possible, material removed from the site;
  - (d) inform the Johnsons of the results of the work.

The following additional Interim Order is entered:

Complainant and Respondent herein shall, within 90 days of the date of this Order, submit such additional pleadings as are required by the foregoing discussion of the issues in this case.

IT IS SO ORDERED.

Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Order was adopted on the 18<sup>th</sup> day of June, 1976, by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board