

ILLINOIS POLLUTION CONTROL BOARD

September 12, 1974

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| ENVIRONMENTAL PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | PCB 71-259 |
| |) | |
| CITY OF MONMOUTH, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by Mr. Henss):

This enforcement case has been remanded to the Board by the Illinois Supreme Court for the sole purpose of determining whether "special conditions" which were imposed by the EPA in a permit which was issued pursuant to Board order were improper and beyond the scope of our Order. These proceedings commenced on September 3, 1971 when the Agency filed its Complaint alleging that the City of Monmouth had violated Section 9(a) of the Environmental Protection Act by the emission of obnoxious odors from a sewage lagoon owned and operated by the City. On September 6, 1972 the Board found Monmouth guilty of the violation as charged. Monmouth was ordered to:

- a. Cease and desist from such violations within six months,
- b. Submit complete plans, specifications and schedule for covering the lagoon and incinerating the hydrogen sulfide gas thus collected,
- c. Submit monthly progress reports to the Agency, and
- d. Pay penalty of \$2,000 for the violations found.

Monmouth appealed to the Third District Appellate Court for review of the Board decision. The Appellate Court vacated our Order and remanded the case back to the Board for further proceedings.

The Agency and Board, jointly, and the City of Monmouth filed appeals to the Illinois Supreme Court seeking final adjudication of this matter. On May 29, 1974 the Supreme Court rendered its decision in which it:

- a. Upheld the Board's power to impose monetary penalties.

- b. Rejected the contention of Monmouth that the action brought against it was criminal in nature.
- c. Rejected the Monmouth contention that its citizens who lived in an industrial area must suffer without remedy any odors which are ordinarily and necessarily prevalent.
- d. Upheld Section 9(a) of the Environmental Protection Act as providing sufficient standards when read in connection with Sections 3(b), 3(d) and 33(c) of the Act.
- e. Upheld the Board's finding that Section 9(a) had been violated.
- f. Held that the Board's Order to cease and desist the violation was moot, since the problem had been abated during the pendency of the appeal.
- g. Struck down the fine imposed because of Monmouth's good faith attempts to solve its problems within the limitations of available technology.
- h. Remanded the cause to the Pollution Control Board to consider whether the permit issued by the EPA to the City pursuant to the Board's Order, was beyond the scope of the Order of the Board, as it contained conditions not directly related to that Order.

The Supreme Court said "the record contains nothing which indicates the basis or reason for the imposition of the 'special conditions', and we conclude that the cause should be remanded to the Board to consider whether the action of the Agency exceeds the scope of its Order". Therefore, the only matters now before us are the reasons for imposition of the special conditions and whether the EPA has exceeded the scope of the Board Order. This proceeding did not commence as a permit dispute but we are bound to follow the Order of the Supreme Court. The record is not sufficient for us to resolve this issue and we therefore remand the case to the Hearing Officer for an additional hearing limited to the issue which has been submitted to us by the Supreme Court. As a part of that issue we would expect the parties to comment on the procedure of declaring the validity or invalidity of a permit in the pending litigation.

ORDER

It is the Order of the Pollution Control Board that this cause be remanded to the Hearing Officer for a public hearing regarding the special conditions of the permit issued by the Environmental Protection Agency to the City of Monmouth for its sewage lagoon odor abatement project. That hearing shall be for

the purpose of determining the basis or reason for the imposition of the special conditions and for considering whether the action of the Agency in imposing those conditions exceeded the scope of the Board Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted this 12th day of September 1974 by a vote of 5 to 0.

Christan L. Moffett