

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
 v.) PCB 72-259
)
NATIONAL BY-PRODUCTS, INC.,)
)
 Respondent.)

Fred C. Hopper, Assistant Attorney General, for the Environmental
Protection Agency;

Harvey B. Stephens and Edward J. Cunningham for Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Parker):

In this enforcement proceeding the Complaint charges Respondent with causing the discharge of oil on land and into a tributary to the Sangamon River and the River itself so as to cause water pollution, and to create a water pollution hazard, in violation of Sections 12 (a) and (d) of the Environmental Protection Act. The Complaint also charges Respondent with causing the tributary and the River to contain floating oil, scum and other floating material in amounts sufficient to be unsightly or deleterious in violation of Rule 1.03 (b) of SWB-14, continued in effect pursuant to Section 49 (c) of the Act.

Respondent's Answer admitted an oil spill on the land but denied that it was done in a place and manner so as to create water pollution, and denied the other substantive allegations of the Complaint.

At the public hearing, held September 1, 1972, it turned out that most of the facts were undisputed, including all of the important ones. Respondent had an unused closed end tank (10-12 feet in diameter by 25 feet long) on its Decatur plant premises that had been used to store No. 6 fuel oil (R. 54, 57). Respondent's plant manager testified that they planned to cut open the tank, which was lying on its side, and use one half of it in a plant process (R. 49-50, 60, see also 41). They knew the tank still contained some oil and the plan was to drain the remaining oil out behind a nearby levee and cover it with sand (R. 50). Respondent's employees knew there was a drain tile

approximately 200 feet down from the tank, and took the precaution of building a dam so that the spilled oil would not reach that drain tile (R. 50, 58).

When Respondent's employees cut into the tank on Friday, October 1, 1971 with a cutting torch, the tank, which contained 400 to 2,000 gallons of oil (R. 40, 44, 56), rolled apart and spilled oil onto the ground (R. 50, 65). What Respondent's employees did not realize was that there was another underground drain tile, hidden from view, nearby, which drain tile led to a ditch which in turn drained to the Sangamon River (R. 51). This second drain tile was located about 150 feet down from the tank, had been capped (R. 45, 51), and was covered with leaves and an inch of dirt (R. 51).

Respondent's employees did not learn of the second drain tile until several days after the oil spill (R. 41, 50-51), which in the meantime had been detected by several environmentalists from Millikin University who were boating along and sampling the nearby River (R. 9-10). The environmentalists noticed an oil slick on the River, traced it to the drain tile (second) on Respondent's property, and followed it several miles downstream (R. 10-11, 31), in the process of which they found one oil covered bird (belted kingfisher) that died later (R. 14, 22-23). The environmentalists reported the incident to the local newspaper (R. 24), and Respondent first learned that oil had reached the River from a newspaper account (R. 57, 63). After seeing the newspaper publicity, Respondent's employees discovered the second drain tile, found that its cap had eroded away (R. 51-52), and that the oil had found its way through the tile into the ditch, and thence to the River (R. 52). While an estimated 750 gallons of oil spilled onto the ground (R. 40, 46), apparently only about 30 to 50 gallons reached the River (R. 56-57).

The environmentalists testified at the hearing about the nature and extent of the oil slicks they observed, and photographs they had taken of the River were placed in the record by the Agency. These photographs (Agency Exh. 1) show floating oil on the River and oil deposits along the River bank and on the environmentalists' canoe (R. 13-14, see also 54).

Upon learning of the presence of oil in the River, Respondent undertook prompt and effective clean-up steps. A trap was immediately installed at the ditch to prevent further oil drainage to the River (R. 52), and several boats sent out on the River laid down straw to absorb the oil (R. 37-38, 42, 53). The clean-up operation lasted about a week (R. 54) and cost Respondent an estimated \$1,200 to \$1,500 (R. 56).

Upon the record evidence we find that Respondent did cause the discharge of oil onto land, and did allow the oil to flow into the Sangamon River so as to cause water pollution. The evidence amply supports each of the allegations of the Complaint, and we conclude that Respondent has violated Sections 12 (a) and (d) of the Act and the relevant rules and regulations in effect at the time the oil spill occurred.

Consistent with past decisions of this Board we assess a money penalty of \$500. We decline to set a higher penalty because of the accidental, one-time nature of the oil spill into the River and in view of the prompt steps taken by Respondent as soon as it learned the oil had reached the River in minimizing the effects of the spill and removing the spilled oil from the River.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

Respondent shall pay to the State of Illinois by November 30, 1972 the sum of \$500.00 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois, 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 24th day of October, 1972, by a vote of 5 to 0.

Christan L. Moffett

