

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-316
)
ILLINOIS CENTRAL RAILROAD COMPANY,)
)
 Respondent.)

Thomas A. Cengel, Assistant Attorney General on behalf of
Complainant;
Joseph W. Phebus, on behalf of Respondent.

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

On July 28, 1972, the Agency filed complaint against Respondent, Illinois Central Railroad Company, alleging violation of Section 12 (a) of the Environmental Protection Act and various rules and regulations, including: Rules 1.03 (a), 1.03 (b), 1.03 (c), 1.07 (2) of SWB-14 and Rules 2.03 (a), 402 and 403 of the Rules and Regulations of the Pollution Control Board.

On or about March 29, 1973, Respondent filed a Motion to Strike and Dismiss and to Compel a More Definite and Certain Complaint. The Agency filed its response to said Motions on April 3, 1973. On April 2, 1973, the Hearing Officer ordered the Agency to file a more definite and certain complaint. On April 4, 1973, the Agency filed a Motion to Expunge Order of the Hearing Officer. Although this Board did not rule directly on the Motion to Expunge, it did deny Respondent's Motions on April 5, 1973. Said denial had the same effect as expungement. Hearings on this cause were held on May 1 and May 8, 1973. On August 30, 1973, the Board, on its own motion, ordered oral argument to be heard on September 13, 1973.

Respondent has owned and operated a locomotive servicing facility and a railroad car repair and construction shop at its Wamac, Illinois, yards for several decades. Respondent's facilities are located several miles south of Centraillia, County of Marion, Illinois. To the east of Respondent's facilities is located a residential area commonly known as Wamac and portions of the old oil fields commonly known as Centraillia Field. Through this old oil field and residential area flows Fulton Creek in a westerly direction. Fulton Creek enters a culvert on the east side of Respondent's property and exits on the west side of Respondent's property, approximately due west of the point of entry. Fulton Creek is underground for the entire distance through Respondent's property.

From its exit on the west side of Respondent's property, Fulton Creek flows south along the west side of Respondent's property a distance of approximately 700 feet, and then flows west to its junction with an unnamed tributary.

This unnamed tributary to Fulton Creek exits on the west side of Respondent's property and has its origin in the confluence of two streams (North Branch and South Branch of the unnamed tributary) which flow generally east to west. Both the North Branch and the South Branch of the unnamed tributary are completely underground while crossing Respondent's property and it is important to note that the confluence of the two Branches occurs thereunder.

The South Branch of the unnamed tributary is in fact composed of two separate drainage ditches which join before reaching Respondent's property. These drainage ditches have their origin southwest of Respondent's property at a plant operated by North American Rockwell.

The North Branch of the unnamed tributary originates in what is termed the Old #5 Mine Pond, several hundred feet east of Respondent's property.

In summary of an admittedly confusing fact situation:

1. Two separate bodies of water exit from beneath the west side of Respondent's property:
 - A. Fulton Creek
 - B. Unnamed tributary to Fulton Creek
2. Fulton Creek and its unnamed tributary merge at a point further west of Respondent's property.

3. Three separate bodies of water enter Respondent's property on the east side and flow beneath it.

A. Fulton Creek

B. North Branch of the unnamed tributary which originates at the Old #5 Mine Pond and merges with the South Branch of the unnamed tributary somewhere beneath Respondent's property.

C. South Branch of the unnamed tributary which merges with the North Branch somewhere beneath Respondent's property and which is, in turn, formed by the confluence of two drainage ditches originating at the North American Rockwell Plant.

We have exercised ourselves at some length because a precise understanding of the spacial relationships described is crucial to the disposition of this cause since the Agency's case is founded upon an attempt to show that the waters which exit Respondent's property are more polluted than the waters which enter it.

As cited above, the Agency has alleged violation of numerous rules and regulations. Specifically, it is charged that Respondent caused or allowed its alleged effluents to contain settleable solids, floating debris, visible oil, grease, scum or sludge solids and color, odor and turbidity above obvious levels, thereby causing or contributing to the pollution of Fulton Creek and its unnamed tributary.

In support of its allegations, the Agency presented a lengthy and detailed case-in-chief which included evidence in the form of expert testimony, photographs, water samples and diagrams. The Agency presented testimony, water samples and photographs regarding the relative condition of the waters of the North Branch of the unnamed tributary as it entered Respondent's property and as it exited therefrom. However, no evidence whatsoever was offered pertaining to the South Branch of the unnamed tributary. In fact, counsel for the Agency stated, during oral argument of the cause on September 13, 1973, that neither he nor any of the Agency personnel involved in the investigation or preparation of the case were aware of the existence of the South Branch of the unnamed tributary.

As described above, the North and South Branches of the unnamed tributary commingle at a point beneath Respondent's property. It is, therefore, clear that evidence intended to prove that waters entering Respondent's property are cleaner than waters exiting therefrom must be accorded little value where the character of certain of the entering water is completely unknown. This is particularly true since Respondent offered evidence that the South Branch of the unnamed tributary is heavily polluted.

As regards Fulton Creek, however, we feel that the evidence presented by the Agency is adequate to support a finding of violation. In particular, the testimony of Joseph N. Mahlandt, an Agency engineer and investigator, as to his observations of Fulton Creek tends to show Respondent has at least contributed to the pollution thereof (5-1-73 R.40-48, 66, 67, 83, 109-116, 207).

Mr. Mahlandt testified that on at least eight separate occasions he observed Fulton Creek to be "normal" on the east side of Respondent's property and polluted as it exited on the west side of Respondent's property. His observations included such characterizations as "reddish brown scum," "light clear oil," "petroleum odor" and "orange bottom deposits." Agency photographs tended to corroborate Mr. Mahlandt's testimony.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that Respondent, Illinois Central Railroad Company, shall:

1. Cease and desist from the violations found herein.
2. Respondent shall pay to the State of Illinois the sum of \$1,000.00 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

3. Within 60 days, file with the Agency a report detailing the abatement procedures it intends to implement.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 18th day of October, 1973 by a vote of 5 to 0.

Christan L. Moffett

