

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1992

NORTH OAK CHRYSLER PLYMOUTH,)
)
 Complainant,)
)
 v.) PCB 91-214
) (Enforcement)
)
AMOCO OIL COMPANY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

Among motions currently pending in this matter are North Oak Chrysler Plymouth's (North Oak) motion for summary judgment and Amoco Oil Company's (Amoco) January 17, 1992 response and cross motion for summary judgment, and Amoco's January 21, 1992 motion to strike. This Order does not address those motions. On January 21, 1992, North Oak moved for leave until January 24, 1992 to file a reply to Amoco's response. This motion is hereby granted. The Board notes that the hearing in this matter scheduled for January 24, 1992 was cancelled by Hearing Officer Order of January 21, 1992 to allow the Board to consider disposition of this matter without hearing. In the interests of administrative economy, the Board additionally requests the parties to address the following issue related to enactment of P.A. 87-323.

This is a UST enforcement action by a current owner against a prior owner. The pleadings indicate that Amoco removed the USTs in 1986, and sold the property to North Oak, which is now attempting to sell the property. Drilling in connection with the second sale indicates contamination from the USTs remains. Among other things, North Oak is seeking that the Board order Amoco to cease and desist from violations of 35 Ill. Adm. Code. Subparts E and F. In other words, North Oak is asking the Board to require Amoco to undertake the release investigation and confirmation steps in Subpart E, and then perform corrective action pursuant to Subpart F.

P.A. 87-323 requires the Board to repeal Subpart E, as set forth in the January 9, 1992, Proposal for Public Comment Opinion and Order in R91-14. The parties are requested to address whether the Board has authority to enter a cease and desist order with respect to Subpart E.

Under P.A. 87-323, release investigation and confirmation would be exclusively under the Fire Marshal's rules. The corrective action requirements of Subpart F are triggered only by a confirmed release. The parties are requested to address whether

the Board has authority to enter a cease and desist order with respect to Subpart F without a showing that Amoco has confirmed a release pursuant to the Fire Marsha;'s rules.

In R91-14, the Board discussed the vagueness created by, and limitations on UST enforcement under P.A. 87-323, as follows:

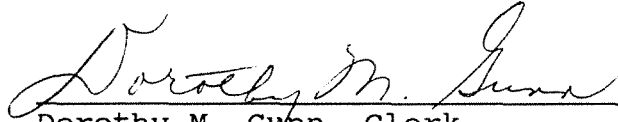
We recognize that the proposed deletions create a vagueness in the remaining portions; however, these amendments are driven by statutory amendments. One problem is that the corrective action provisions of the USEPA rules exist within the larger body of the UST rules. They include cross reference into that larger body of rules. It is unclear how the Board is supposed to deal with these cross references. As is discussed below, the Board has proposed to repeal the cross references, leaving a narrative description of the actions being referenced. This may make it difficult for persons to follow the rules in actual practice. However, this result appears to be dictated by the statutory amendments.

We suggest that another problem with the current scheme is that there appears to be no real enforcement potential before the Board, except for failure of the operator to properly execute his corrective action plan, even for intentional violation of the design and operating requirements. For example, an operator could intentionally design a tank in violation of the regulations, operate it in a reckless manner so as to cause a release, and then fail to report the release. So long as the operator (after being caught) complied with the corrective action requirements of Subpart F, there would be no possibility of enforcement before the Board. Moreover, if the operator failed to comply with Subpart F, Board enforcement would be limited to enforcement of the "paperwork" requirements of that Subpart. There would be no opportunity to enforce for the pollution incident itself, or for the underlying design and operating violations which caused the release.

The parties are directed to respond to these issues in a filing to be received by the Board on or before February 21, 1992. The Clerk is requested to serve the parties with a copy of the R91-14 Opinion and Order of January 9, 1992, along with a copy of this Order, via first class mail.

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 23rd day of January, 1992, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board