

ILLINOIS POLLUTION CONTROL BOARD
September 5, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Complainant,)
)
FLORENCE FARMER,)
)
Complainant-Intervener,)
)
v.) PCB 78-233
)
GRANITE CITY STEEL,)
DIVISION OF NATIONAL STEEL)
CORPORATION,)
)
Respondent.

ORDER OF THE BOARD (by B. Forcade):

On July 12, 1985, the Agency moved the Board to dismiss its complaint in this action without prejudice. The complaint alleges violations of the Act arising out of emissions during the time period of September through November, 1977. The motion asserts that the plant has not been operated since 1982, that the "company does not know when it will operate again", and that it is "virtually impossible to determine whether the sinter plant was the source of 1977 'white ash' emissions without the plant operating." The Agency asserts that, in the event Granite City seeks to reopen the plant, conditions would be imposed in a new permit to allow for future identification of the source of the "white ash" emissions. No response has been filed by Granite City or by the Intervenor, who had received extensions of time until August 30 in which to do so pursuant to August 1 and August 15 Orders of the Board.

On July 30, 1985, Granite City moved to dismiss the Intervenor's complaint with prejudice, alleging in the motion and supporting memorandum, "refusal to comply with Orders of the Hearing Officer [and Board rules]; failure to diligently pursue her claims; consistent efforts to delay a hearing on the merits; and improper motive in maintaining her action" -- the "desire to extract monetary damages and attorney's fees from the Respondent". No response has been filed by the Agency or by the Intervenor, who had received an extension of time until August 30 to do so pursuant to an August 15 Order of the Board.

History of the Action

The Board notes that this action commenced in August, 1978. The parties first proposed a stipulated penalty in 1979 which was rejected by the Board by Order of August 23, 1979. The settlement would have allowed the "\$10,000 proposed penalty to be reduced by the amounts paid to citizens in settlement of their property damage claims". The proposal was rejected because the Board disfavored contingent penalties, and because the penalty proposal "does not aid in enforcement of the Act or induce compliance with regulations. It is not the Board's duty to expedite the settlement of private claims and the Board does not now intend to extend its authority over this area".

The Board accepted a second proposed stipulation by Order of July 10, 1980. This required payment of a \$10,000 penalty and required institution of an emission control program calling for replacement of the old baghouse on its sinter plant with a new one. The Board had affirmed the hearing officer's denial of Mrs. Farmer's petition to intervene, on the grounds that a petition filed one week after the last hearing was untimely.

Mrs. Farmer appealed this Order. By Order of March 19, 1982, the Board reopened the record in this matter and acknowledged Mrs. Farmer's status as Intervenor pursuant to the mandate issued March 9, 1982 by the Fifth District Appellate Court in Florence Farmer v. IPCB, No. 80-337. Granite City asserts that prior to the entry of this Court Order, it had complied with the terms of the settlement, including payment of the \$10,000 penalty. It additionally asserts that it ceased operations at this plant at the beginning of April, 1982.

An amended complaint was filed June 3, 1982. By Order of September 2, 1982, the Board denied a motion to dismiss, but struck claims against the Agency. A motion for reconsideration of this ruling was denied by Order by December, 1982.

Discovery commenced in 1983. In its motion to dismiss, Granite City cites entry of a Hearing Officer Order on June 20, 1985 requiring a) compliance with a previous December 14, 1983 Order requiring completion of answers to Granite City's First Set of Interrogatories, and b) answers to Granite City's June 18, 1985 Second Set of Interrogatories. No responses to this Order were filed as of July 30.

By Orders of June 5 and July 2, the Hearing Officer scheduled a prehearing conference for July 15 and required filing of a prehearing statement by July 9, hearings in the matter being scheduled for July 18-19. (Hearings had been previously scheduled for June 13-14, but were cancelled at intervenor's request.) No prehearing statements were filed. The intervenor was "not ready" to discuss the issues at the July 15, 1985 prehearing conference (7-15-83 transcript, p. 68). The July 18-19 hearings were cancelled.

At that prehearing conference, there was considerable discussion among counsel for the parties concerning Mrs. Farmer's desire to collect damages and attorney's fees as a result of this action, in addition to obtaining a finding of violation (see Id., p. 19-24, 52-55). It is the position of the Attorney General that dismissal of its complaint, is a "more than acceptable resolution to this enforcement case", given the Agency's ability to impose monitoring and testing conditions in any permit allowing future plant operations (Id., p. 21). Counsel for the Agency stated that personnel and copying resources would be available to Mrs. Farmer even if the Agency is dismissed as a party (Id., p. 24), opining that a circuit court action might be more appropriate than an action before the Board if monetary claims are at issue (Id., p. 21-22).

Resolution

The Board grants the Agency's motion to dismiss its complaint without prejudice. In so doing, the Board accepts the Attorney General's discretionary determination that the enforcement resources of its Office and the Agency are better expended elsewhere; there is no settlement before the Board to accept or reject.

This ruling leaves Florence Farmer as sole complainant. Mrs. Farmer has repeatedly failed to proceed in her prosecution of this matter since March 19, 1982 when the Board reopened this docket. While the Board has repeatedly attempted to hold a hearing, it has been unable to do so. Despite repeated extensions of time, Mrs. Farmer has even failed to respond to the motions to dismiss under consideration here.

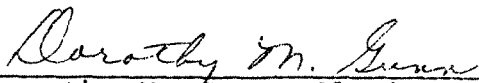
As a result of Mrs. Farmer's failure to diligently pursue the prosecution of her claims for well over two years, this action is dismissed from the Board's docket.

The result of these rulings is the dismissal of this action in its entirety, and the closing of the Board's docket in this matter. The Board notes that it lacks statutory authority to award monetary damages to Mrs. Farmer.

Board Member J. Anderson concurred.

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 5th day of September, 1985 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board