

ILLINOIS POLLUTION CONTROL BOARD  
July 12, 1979

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 79-1  
 )  
BORDEN CHEMICAL, a division )  
of BORDEN, INC., a New Jersey )  
corporation, )  
 )  
Respondent. )

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

SIDLEY & AUSTIN, ATTORNEYS AT LAW (MR. ROGER H. DUSBERGER, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the January 3, 1979 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On February 8, 1979, the Complainant filed its First Set of Interrogatories and Request to Admit Facts. The Respondent filed its Answer to the Request to Admit Facts on March 14, 1979, and filed its Answers and Objections to EPA's First Set of Interrogatories on March 21, 1979. On March 20, 1979, the Complainant filed its Motion to Amend Complaint and Amended Complaint. On April 12, 1979, the Agency filed a Motion to Supplement the Amended Complaint and First Page of Amended Complaint (the first page of the Amended Complaint had been inadvertently omitted). On April 26, 1979, the Board granted the Agency leave to supplement the Amended Complaint. Count I of the Amended Complaint alleged that the Respondent discharged wastewater containing pollutants from its chemical plant into Long Point Slough via an unnamed ditch in excess of the effluent limitations set in its NPDES permit for pH, BOD<sub>5</sub>, and suspended solids during the months of November, 1977; December, 1977; January, 1978; December, 1978; and January, 1979 in violation of Rules 410(a) and 901 of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and of Sections 12(a) and 12(f) of the Illinois Environmental Protection Act ("Act"). Count II alleged that, on March 30, 1978, effluent discharged from the Borden plant produced unnatural color and turbidity in the unnamed ditch which is

tributary to Long Point Slough, in violation of the Respondent's NPDES Permit and Rule 203(a) and 901 of Chapter 3 and Sections 12(a) and 12(f) of the Act. Count III of the Complaint alleged that, on June 6, 1978, a discharge, resulting from the rupture of a sludge holding lagoon (which was built and operated without the requisite Agency Construction Permit or Operating Permit), produced unnatural odor, color and turbidity in the unnamed ditch and in Long Point Slough itself, in violation of Rules 203(a), 901, 951, and 952 of Chapter 3 and Sections 12(a), 12(b) and 12(f) of the Act. A hearing was held on June 13, 1979. The parties filed a Stipulation and Proposal for Settlement on June 26, 1979.

The Respondent operates a chemical plant in Illiopolis at the intersection of Cantrall Road and South Victory Drive in Sangamon County, Illinois. Borden Chemical ("Borden") discharges wastewater to an unnamed ditch which is tributary to Long Point Slough\* pursuant to its NPDES Permit No. IL 0001350.

In the Statement of Stipulated Settlement, the Agency indicated that, if a full hearing were to be held in this matter, it would present evidence to support its contention that the rupture of the Respondent's sludge holding lagoon on June 6, 1978 caused discharges which "produced unnatural odor, color and turbidity" in Illinois waters. (Stip. 2). The Complainant also noted that it has no evidence which would indicate any other water quality violations due to the June 6, 1978 discharge. (Stip. 3-4). Additionally, it is the Agency's position that both a Construction Permit and an Operating Permit were required for this sludge holding lagoon. (Stip. 4). However, the Respondent maintains the position that since the sludge holding lagoon was part of a treatment system for which Borden had previously been issued an NPDES Permit by the United States Environmental Protection Agency ("USEPA"), no additional permits were required for the sludge holding lagoon. (Stip. 5). Moreover, the Respondent has stated that, if a full hearing were to be held in this matter, it would produce evidence to show that, within 15 minutes after the rupture in the sludge holding lagoon was observed, a crew was formed to stop the leak. (Stip. 5). The Company states that the maximum time that the rupture allowed a discharge was from 45 minutes to 1 hour. (Stip. 5). Borden believes that the discharge from the

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\*Long Point Slough is a "navigable water" as that term is used in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and a water of the State of Illinois as that phrase is used in the Illinois Environmental Protection Act.

ruptured sludge holding lagoon was caused by: (1) the addition of sludge of a thinner consistency (this consistency was unknown to the Respondent at the time); (2) the formation over time of a layer of water on the top of the sludge mixture (this water layer was not visible due to the existence of a foam cover over the water); and (3) the over-filling of the sludge lagoon. (Stip. 4).

The proposed settlement agreement provides that: (1) should Borden (or a consultant hired by Borden) undertake a study to investigate methods to improve its effluent quality during cold weather periods, Borden agrees to provide the Agency with the results of the study and (2) Borden agrees not to use the sludge holding lagoon (which ruptured on June 6, 1978) in the future, unless such use is consistent with the applicable laws and Board regulations. Additionally, the settlement proposal provides that the Agency agrees to dismiss Counts I and II of its Amended Complaint. (Stip. 7). Furthermore, the settlement agreement provides for a stipulated penalty of \$4,000 .

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board hereby dismisses Counts I and II of the Amended Complaint. The Board finds that the Respondent has violated Rules 203(a), 901, 951 and 952 of Chapter 3: Water Pollution Control Regulations and Sections 12(a), 12(b) and 12(f) of the Act. Accordingly, the Respondent shall pay the stipulated penalty of \$4,000 .

The Board has also considered the NPDES Permit issue in light of the decision by the U.S. Court of Appeals in Citizens for a Better Environment v. EPA, No. 78-1042, \_\_\_\_\_ F. 2d \_\_\_\_\_ (7th Cir. 1979), and finds that the Board has competent jurisdiction over the subject matter in the Amended Complaint pursuant to Sections 11(b), 12(f) and 13(b) of the Act and Board regulations established thereunder.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent has violated Rules 203(a), 901, 951 and 952 of Chapter 3: Water Pollution Control Regulations and Sections 12(a), 12(b) and 12(f) of the Act.

2. Counts I and II of the Amended Complaint are hereby dismissed

3. The Respondent shall not use the sludge holding lagoon (which ruptured on June 6, 1978) in the future, unless such use is consistent with the applicable laws and Board regulations.

4. The Respondent shall provide the Agency with the results of a study to investigate methods to improve Borden's effluent quality during cold weather periods, if any such study is undertaken by the Respondent (or by a consultant hired by Borden).

5. Within 45 days of the date of this Order, the Respondent shall pay the stipulated penalty of \$4,000 . Payment shall be made by certified check or money order payable to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

6. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed June 26, 1979, which is incorporated by reference as if fully set forth herein.

Dr. Satchell and Mr. Goodman abstain.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 12<sup>th</sup> day of July, 1979 by a vote of 3-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board