

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

ENVIRONMENTAL PROTECTION AGENCY)
and the PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainants,)
)
v.) PCB 78-54
)
AMOCO OIL COMPANY, a Maryland)
corporation, and AMOCO PIPELINE)
COMPANY, a Maine corporation,)
)
Respondents.)

DISSENTING OPINION (by J. Anderson):

This complaint was filed on February 27, 1978. The complaint alleges violations by the respondents of various provisions of the Environmental Protection Act (Act) and the Board's rules and regulations as a result of a pipeline rupture in December, 1977 that caused xylene to be released. On July 22, 1980, the Complainants presented to the Board a Motion to Dismiss this action without prejudice, stating in part, that "the parties arrived at a mutually acceptable manner of disposing of the matters alleged in the Complaint" (Par. 2) and that "Complainants believe that further litigation of this cause would serve no useful purpose under the act" (Par. 3). On July 24, 1980, the Board ordered the complaint dismissed with prejudice. On August 7, 1980 the Complainants filed a motion requesting reconsideration of the Board's July 24, 1980 order. In support of its motion, the complainants argued that they had an absolute right, in the absence of any Board rules to the contrary, to have this cause dismissed as they submitted it, namely, without prejudice, citing Village of South Elgin, et al. v. Waste Management of Illinois, Inc., et al., 64 Ill.App.3d 565, (2d Dist. 1978), (Elgin). On August 21, 1980, the Board reversed itself and provided for dismissal without prejudice.

I dissent in the Board's reversal, because I believe that the Board should have corrected this matter by, as a first step, ordering a public hearing. I see no reason why Elgin should be construed as preventing the Board, while the case is pending and prior acting on the dismissal question, from directing the hearing officer to schedule a hearing to place under public scrutiny any compromise or settlement, specifically in this case the substance of the "mutually acceptable manner of disposing of the matters alleged in the complaint." Concerns that the Complainants might fail to appear at the hearing or fail to make a substantive record should not deter the Board. In such an unlikely event, such a record

would speak for itself, even if the Board chose not to invoke Sec. 5(e) of the Act and Part VII of the Procedural Rules.

Once an enforcement proceeding is filed, it falls under Board authority (Sec. 306, Procedural Rules). 306(b) states that when a complaint is filed by the Agency, "the Chairman shall designate a hearing officer." Sec. 307 provides for public notice of the hearing, including "by public advertisement in a newspaper of general circulation in the county in which the cause of action arose. (307(b)2 and (d)3).

Procedural Rule 331 requires that all settlements or compromises proposed in any case pending before the Board shall be filed with the hearing officer (331(a)), presented and discussed at a public hearing "in which all interested persons may testify..." (331(b)) and presented to the Board for its consideration (331(c)).

This procedure outlined above exists to ensure that, at the very least, all settlements or compromises are made public in an open forum prior to Board action. Even if Elgin is construed to mean that the Board's rules must be amended to specifically provide for the Board's discretionary authority on motions for dismissal, by complainants, the very least the Board should do in the interim is to preserve the public disclosure provisions and intent of Procedural Rules 306, 307 and 331. This is especially important when the complainant, the Environmental Protection Agency (Agency) is acting on behalf of the people of the State of Illinois. Apart from the legal question of whether the existence of Rule 331 renders Elgin inapplicable, the Board (and the Agency) should choose to avoid any appearance that a motion for dismissal is being used as a mechanism to circumvent public disclosure of the results of the formal and informal meetings and discussions that led to a mutually acceptable disposal of the allegations. (See Motion to Dismiss, Par. 1 and 2).

I also feel that Complainants' Motion to Dismiss without prejudice, which leaves room for later renewal of the action, is logically inconsistent with supporting paragraph 3 of the Motion, which states... "further litigation... would serve no useful purpose under the act."

Finally, I believe that until the Procedural Rules are clarified, the Board should authorize hearings before acting upon any motions for dismissal by the Complainants, with the possible exception of those whose basis is clearly lack of jurisdiction. This conforms to the spirit of Part III of the Procedural Rules, which contemplates that notice be given and a public hearing be held before the Board finally disposes of any enforcement action.

Joan G. Anderson
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I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 29th day of August, 1980.

Christan L. Moffett, Clerk
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