

ILLINOIS POLLUTION CONTROL BOARD

August 10, 2000

|                                    |   |                     |
|------------------------------------|---|---------------------|
| PEOPLE OF THE STATE OF ILLINOIS,   | ) |                     |
|                                    | ) |                     |
| Complainant,                       | ) |                     |
|                                    | ) |                     |
| v.                                 | ) | PCB 93-191          |
|                                    | ) | (Enforcement - UST) |
| ESTATE OF LLOYD WIEMANN and CHERYL | ) |                     |
| HALBROOKS,                         | ) |                     |
|                                    | ) |                     |
| Respondents.                       | ) |                     |

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|--------------------------|---|---------------------|
| ESTATE OF LLOYD WIEMANN, | ) |                     |
|                          | ) |                     |
| Cross-Complainant,       | ) |                     |
|                          | ) |                     |
| v.                       | ) | PCB 93-191          |
|                          | ) | (Enforcement - UST) |
| CHERYL HALBROOKS,        | ) | (Cross-Complaint)   |
|                          | ) |                     |
| Cross-Respondent.        | ) |                     |

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board for approval of a proposed stipulation and settlement of this action in its entirety. For reasons explained below the Board accepts the stipulation and proposal for settlement filed by the parties.

On October 8, 1993, the People of the State of Illinois filed a complaint against Lloyd Wiemann d/b/a Lloyd Wiemann Ice and Fuel Company (since replaced as a respondent by the Estate of Lloyd Wiemann) (Wiemann) and Cheryl Halbrooks (Halbrooks). In response to a motion by Wiemann by order of October 16, 1997, the Board acknowledged existence of a cross-complaint by Wiemann against Halbrooks and other respondents since dismissed from this action. The cross-complaint presently pending before the Board was filed on November 8, 1999, and accepted by the Board on December 2, 1999.

The complaint alleges that respondents violated the Board's regulations found at 35 Ill. Adm. Code 731.162(a)(2)-(6), 731.162(b), and 731.163(a) and (b) by failing to perform spill abatement measures, failing to collect and/or submit a report summarizing abatement measures and provide information or data within 20 days after release confirmation, and failing to collect and/or submit required information within 45 days of the release confirmation. Wiemann's cross-complaint alleges Halbrooks violated 35 Ill. Adm. Code 731.163(a) and (b) by failing to collect and/or submit required information within 45 days of the release confirmation.

On June 28, 2000, complainant and respondents filed a stipulation and proposal for settlement. The proposed stipulation would settle both the complainants' complaint against both respondents as well as the cross-complaint filed by Wiemann against Halbrooks.

Pursuant to Section 31(c)(2) of the Environmental Protection Act (Act) (415 ILCS 5/31(c)(2) (1998)), the Board caused publication of the required newspaper notice of the stipulation and proposal for settlement and request for relief from the hearing requirement. The notice appeared in the *Collinsville Journal* and *East St. Louis News*

*Journal* on July 5, 2000. The Board did not receive any requests for hearing. Accordingly, the Board grants a waiver from the hearing requirement.

The stipulation and proposal for settlement sets forth the facts relating to the nature, operations, and circumstances surrounding the allegations in the complaint. The stipulation covers activities at two sites. Site One is a gasoline service station operated by Halbrooks in Collinsville, Marion County, Illinois. The station's underground storage tank system (UST) was regularly refueled by Wiemann. Site Two is a UST system owned by Wiemann in Washington Park, St. Clair County, Illinois; Halbrooks had no involvement or liability at Site Two. At each site, petroleum from the UST system entered into the subsurface soils and/or groundwater.

The stipulation recites, among other things, that "alleged violations have existed since April 1999 at Site One and February 1992 at Site Two and are ongoing, due to a dispute among the parties as to liability and apportionment of the same," but also that respondents are currently working "to achieve compliance at all sites" (stip. at 5, para. 1, 2).

Respondent Wiemann agrees to pay a civil penalty of \$5,000 in two installments. The stipulation also sets out various compliance measures to be taken at both sites and various agreements between respondents (including agreements by Wiemann to pay certain sums to Halbrooks). Respondents must continue to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board's regulations.

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

#### ORDER

1. The Board hereby accepts the stipulation and settlement agreement executed by the People of the State of Illinois, the Estate of Lloyd Wiemann (Wiemann) and Cheryl Halbrooks (Halbrooks). The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.
2. The respondent Wiemann shall pay a civil penalty of \$5,000 in two payments of \$2,500. The first payment is due on or before September 9, 2000; the final payment shall be due on or before December 8, 2000. Such payment shall be made by certified check payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and the respondent's estate identification number 37-6355917 shall also be included on the check and should clearly indicate that payment is directed to the Environmental Protection Trust Fund.
3. The checks shall be sent by first class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

A copy of the payment transmittal and check shall be simultaneously submitted to:

Ms. Donna Lutes  
Office of the Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

4. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1998)), as now or

hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

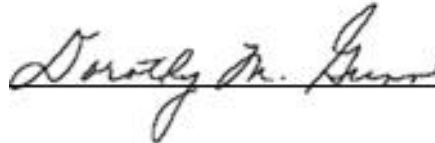
5. Both respondents are to comply with all additional terms agreed upon in the settlement agreement which is incorporated by reference into this opinion and order.
6. Respondents shall cease and desist future alleged violations of any federal, State, or local statutes and regulations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 10th day of August 2000 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board