

ILLINOIS POLLUTION CONTROL BOARD  
November 22, 1971

ENVIRONMENTAL PROTECTION AGENCY )  
  )  
  v.  )  PCB 71-246  
  )  
YETTER OIL COMPANY  )

Mr. Prescott Bloom, Special Assistant Attorney General, and  
Mr. Timothy Elder, Attorney General Intern, appeared on behalf  
of the Environmental Protection Agency

Mr. Lyman R. Fort, appeared on behalf of the respondent

OPINION OF THE BOARD (by Mr. Kissel):

On August 19, 1971, the Environmental Protection Agency (the "Agency") filed a complaint with the Board against the Yetter Oil Company ("Yetter") in which the Agency alleged that Yetter had, on April 16, 1971, allowed oil to be discharged into an unnamed tributary of Troublesome Creek in violation of Section 12(a) of the Environmental Protection Act, and Rules 1.03(b) and 1.03(d) of the regulations applicable to the intrastate waters of the State, SWB-14. The Agency further alleged that oil was still visible in the stream on May 6 and May 25 in violation of the Act and the same Rules. In its written answer, filed before the hearing, Yetter admitted the existence and applicability of the Act and the cited Rule of SWB-14, but denied that it was the person that had discharged oil into the unnamed tributary. A hearing was held on the complaint before Howard S. Miller, Hearing Officer, on October 21, 1971, in Macomb, Illinois.

Yetter operates an oil field in Section 16 of LaMoine Township in McDonough County near Colmar, Illinois. Yetter pumps about 35,- to 40,000 barrels of oil per year from a field that has been in operation since about 1914. Yetter wholesales the oil after it is pumped. In all there are about 90 wells on the site.

While Yetter denied that it had caused a spill of oil in its answer to the Agency's complaint, it admitted that it had had an oil leak from one of its pipes on or about April 16, 1971. This testimony in the record leaves no doubt that Yetter was responsible for the oil which was present in an unnamed ditch which flowed into Troublesome Creek and was present there. The Agency representative found upon inspection that one of the pipes near the ditch had been recently

repaired and Yetter admitted that it had sent a crew of men to not only repair the leak, but to clean up the stream as well. Yetter's methods to clean up the stream, however, were not successful enough to keep the oil from floating down Troublesome Creek where it was seen by a fisherman, Sidney Dowacter. Yetter tried to dam the unnamed ditch to stop the oil from floating into and on the Creek, but apparently the dam leaked as well and the pipes on the lower part of the berm carried oil as well as water into Troublesome Creek. Yetter also used straw in an effort to soak up the oil, and while this was successful in reducing the amount that went into Troublesome Creek, it did not completely alleviate the discharge.

There was little testimony in the record as to the damage done to the Creek, or the aquatic life living therein. There is no question that the spill was visible, since it was first reported by Mr. Dowacter. He saw the oil on the water while fishing on the Creek. He also testified (and this is really the only testimony on "damage" done by the spill) that he was not able to fish on the Creek for about two months after the spill, and that in his experience as a fisherman and fish eater, any fish in the stream would have an "oily" taste.

The initial question to be determined by the Board is whether there was a violation of the Act or the regulations promulgated thereunder. The Agency alleged that Yetter was guilty of violating Section 12(a) of the Act, and Rules 1.03(b) and (d) of SWB-14. Section 12(a) of the Act prohibits the discharge of any contaminant into the environment of the State so as to cause "water pollution", which is defined in Section 3(a) of the Act. Rule 1.03 of SWB-14 provides as follows:

"These Minimum Criteria shall apply to all waters at all places and all times in addition to specific criteria applicable to specific sectors:

. . .

(b) Free from floating debris, oil, scum and other floating materials attributable to municipal, industrial or other discharges in amounts sufficient to be unsightly or deleterious;

. . .

(d) Free from substances attributable to municipal, industrial, or other discharges in concentrations or combinations which are toxic or harmful to human, animal, plant or aquatic life."

It is clear from the record that Yetter violated each of the provisions of the rules and the basic prohibitions of the Act itself. The uncontrolled discharge of oil into the waters of the State as described by the various witnesses in the record certainly is "water pollution" as contemplated by the Act. The testimony was that the stream was not usable for a period of at least two months after the spill had occurred and this was certainly "detrimental . . . to the recreational" use of the stream, which was solely due to the discharge of contaminants, namely, oil into the stream. Section 12(a) also was violated in that the rules and regulations of the Board were violated. Rules 1.03(b) and (d) were both breached when the discharge of oil occurred. Both Rules make it illegal for anyone to discharge oil in the quantities discharged by Yetter in this case. While there is some dispute as to the amount of oil which reached the stream (one witness estimated it at about 25 to 30 barrels and Yetter calculated the loss at 13.94 barrels), there is no dispute that a significant amount of oil reached the stream. It is Yetter's obligation, as a handler and pumper of oil, to see that this does not occur. Yetter failed in its obligation under the Act and the Rules of the Board and therefore must be penalized. We do consider the spillage of oil a serious matter. If allowed to go unchecked, it could ruin the Illinois waterways. However, in this case we must consider the fact that the spill was indeed small (although visible) and that Yetter did exert efforts to reduce the effect of the spill on the stream. It is also noteworthy that there was no specific allegation or proof that the oil spill injured the fish in any way. No fish kill was reported. With all of those facts in mind we feel that Yetter should pay \$500 in penalty for allowing the discharge of oil into the streams of Illinois. We also feel (and will so order) that a cease and desist order should be entered against Yetter so that future discharges of this kind will not occur.

This opinion constitutes the findings of fact and conclusions of law of the Board.


#### O R D E R

After consideration of the testimony and the exhibits, the Board hereby orders the following:

1. Yetter shall cease and desist from discharging any oil into the waters of the State which discharge shall result in a violation of the Environmental Protection Act or the regulations promulgated thereunder.

2. Yetter shall pay to the State of Illinois, in penalty, the amount of \$500 for the violation of the Act and the applicable regulations as outlined in the opinion of the Board.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order on this 23 day of November, 1971.

  
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Christan Moffett,  
Acting Clerk