

1 ILLINOIS POLLUTION CONTROL BOARD
2 May 12, 2004
3 VOGUE TYRE & RUBBER COMPANY,)
4 Petitioner,)
5 vs.) PCB 96-10
6 ILLINOIS ENVIRONMENTAL) (UST Appeal)
7 PROTECTION AGENCY,)
8 Respondent.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

 TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause on the 12th day of May, A.D.
2004, at 9:00 a.m.

BEFORE: HEARING OFFICER BRADLEY P. HALLORAN.

1 APPEARANCES:

2

3 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

4 (1021 North Grand Avenue East,

5 P.O. Box 19276,

6 Springfield, Illinois 62794-9276,

7 217-782-5544), by:

8 MR. JOHN J. KIM,

9 appeared on behalf of the IEPA;

10

11 SCHUYLER, ROCHE & ZWIRNER,

12 (One Prudential Plaza, Suite 3800,

13 130 East Randolph Street,

14 Chicago, Illinois 60601,

15 312-565-8485), by:

16 MR. JEFFREY E. SCHILLER,

17 appeared on behalf of Vogue Tyre &

18 Rubber Company.

19

20

21

22

23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

L.A. REPORTING (312) 419-9292

1 THE HEARING OFFICER: Good morning
2 everyone. My name is Bradley Halloran, I'm with the
3 Illinois Pollution Control Board. I'm also assigned
4 to this matter PCB 96-10 Vogue Tyre and Rubber
5 Company versus the Illinois Environmental Protection
6 Agency. This is an appeal regarding -- well, in a
7 nutshell, it's an underground storage tank appeal.

8 It's, approximately, 9:10 on May
9 12th of the year 2004. I want to note, for the
10 record, there are no members of the public here,
11 however, if there were, they'd be allowed to make a
12 public statement or comment.

13 We are going to run this hearing
14 pursuant to Section 104, Subpart D, and Section 101,
15 Subpart F of the Board's general provisions. And I
16 also want to add this hearing has been noticed up
17 pursuant to 101.602.

18 And this hearing is intended to
19 develop a record for the Pollution Control Board. I
20 will not be making the ultimate decision in the
21 case. Of course, that's up to the Pollution Control
22 Board to look at the transcript, the record, and
23 post-hearing briefs and render a decision therefore.

24 My job is to ensure an orderly

1 hearing, a clear record, and to rule on any
2 evidentiary matters that may arise. And, again, as
3 stated before, we worked out a post-hearing brief,
4 but I will visit that later.

5 And with that said, Mr. Schiller,
6 would you like to introduce yourself, please.

7 MR. SCHILLER: Yes. My name is
8 Jeffrey Schiller from the law firm Schuyler, Roche &
9 Zwirner, and I'm appearing on behalf of the
10 petitioner, Vogue Tyre and Rubber Company.

11 MR. KIM: John Kim, with the Illinois
12 EPA.

13 THE HEARING OFFICER: I think -- I
14 don't know if you're going to do opening, you're
15 going to waive those, or you're just going to read a
16 stipulation into the record, Mr. Schiller? Am I
17 correct on that, Mr. Kim?

18 MR. SCHILLER: Yeah, I think,
19 basically, what we have agreed to do is we have got
20 a record that we both agreed is the record from
21 which we will work in the case, the documents and
22 the submissions. We can put a copy of that in as
23 the complete record.

24 That left one issue, and we have a

1 stipulation of the fact with respect to that
2 particular issue. And once that stipulation is read
3 and made part of the record, that will be the
4 complete record between the parties.

5 There will be no witnesses, right,
6 John?

7 MR. KIM: That's correct.

8 THE HEARING OFFICER: Okay.

9 MR. SCHILLER: I'll read in the
10 stipulation after the fact and we can do the rest.

11 "Now come the petitioner, Vogue
12 Tyre and Rubber Company, by its attorney and the
13 respondent the Illinois Environmental Protection
14 Agency by one of its attorneys, and hereby submit to
15 the Illinois Pollution Control Board this
16 stipulation of fact. The parties hereby stipulate
17 as follows:

18 "One, if Vogue were to present
19 live testimony at this hearing on May 12th, 2004,
20 that testimony would include a statement that it was
21 Vogue's belief as of, at least, February 1985 that a
22 large quantity of gasoline disappeared from the
23 Vogue site due to other than a leak in the piping
24 associated with underground storage tanks at the

1 site. This belief was formed because of a report
2 issued by a company hired by Vogue to investigate
3 the disappearance.

4 "Two, Vogue later discovered in
5 1994 and acknowledged prior to submission of
6 technical reports that were the subject of the final
7 decision under appeal that the reason for
8 disappearance of gasoline from the Vogue site was
9 due to a release of gasoline from underground
10 storage tanks and that will be identified as
11 'Vogue's mistaken belief.' .

12 "Three, because Vogue thought that
13 Vogue's mistaken belief was not a part of the
14 consideration which the Illinois EPA would make in
15 this case, Vogue's mistaken belief was not conveyed
16 at any time to the Illinois EPA in any documents
17 submitted as of the time of the final decision under
18 appeal.

19 "Four, both Vogue and Illinois EPA
20 are allowed to make any and all arguments in the
21 post-hearing briefing as to the lack of merit -- as
22 to merit or lack of same for the relevance of
23 Vogue's mistaken belief." And were that in writing,
24 that would be signed by both parties.

1 THE HEARING OFFICER: Okay. Thank
2 you.

3 So, pretty much, you've rested
4 your case in chief?

5 MR. SCHILLER: We've rested our case
6 in chief.

7 THE HEARING OFFICER: Mr. Kim, do you
8 have to say anything or submit anything as an
9 exhibit?

10 MR. KIM: I do. I have one exhibit.
11 And in compiling the record, through a copying
12 error, one page, actually of the final decision, was
13 not copied because it was a double-sided page. In
14 the record between Pages 95 and 96, there should
15 have been one additional page, which I will -- I
16 provided to petitioner's counsel, I've provided to
17 the hearing officer.

18 It's just marked as Respondent's
19 No. 1. And I believe, actually, a full copy of the
20 final decision was included with the petition and
21 filed by the petitioner anyway. So -- but this is
22 just to complete the record.

23 THE HEARING OFFICER: Thank you.

24 Mr. Schiller, are there any

1 objections?

2 MR. SCHILLER: No.

3 THE HEARING OFFICER: Okay.

4 Respondent's Exhibit No. 1 is admitted into
5 evidence.

6 THE HEARING OFFICER: We can go off
7 the record if you want.

8 MR. SCHILLER: Yeah.

9 (WHEREUPON, discussion was had
10 off the record.)

11 THE HEARING OFFICER: Back on the
12 record. Mr. Kim has something to say.

13 MR. KIM: Yes. A point came up, when
14 the Agency compiles the administrative record, we
15 consider that document to contain all documents that
16 were relied upon by the Agency in reaching its
17 final decision under appeal. Therefore, usually,
18 the last document of the document that's latest in
19 time is the final decision itself.

20 The petition that was filed in
21 this case, obviously, post-dates the final decision,
22 and, therefore, the petition is not included as part
23 of the administrative record. However, the parties
24 have discussed this and agree that the petition

1 should be considered by the Board in its
2 deliberations and specifically that the facts
3 contained within the petition, in whatever fashion,
4 in a alleged form, what have you, any facts that are
5 contained in the petition should be considered as
6 true and admitted, and may be relied by both parties
7 in making an argument.

8 MR. SCHILLER: In that sense, should
9 we include the petition as part of the record as an
10 exhibit?

11 MR. KIM: I think -- I mean, I don't
12 know if the Board can just take notice of that.
13 They've got it in their records already.

14 THE HEARING OFFICER: You mean take an
15 official notice?

16 MR. KIM: I'm just thinking to save
17 copies. But whatever -- however you would like it,
18 Mr. Hearing Officer, is fine with me.

19 THE HEARING OFFICER: You know what I
20 think I'll do to make it cleaner, what I'll do is
21 I'll mark the petition itself as Hearing Officer
22 Exhibit 1.

23 MR. KIM: Sure.

24 MR. SCHILLER: Okay.

1 THE HEARING OFFICER: And I will --
2 what I will do -- if Mr. Schiller and Mr. Kim, you
3 can get together after the hearing and get me a
4 copy, I guess, I just need one copy, and I'll take
5 it as an exhibit.

6 MR. SCHILLER: Okay.

7 MR. KIM: Okay.

8 THE HEARING OFFICER: We can do it
9 that way. It might, again, make it cleaner and a
10 little clearer.

11 MR. KIM: That's fine.

12 THE HEARING OFFICER: Anything else,
13 Mr. Kim?

14 MR. KIM: Nothing further.

15 THE HEARING OFFICER: Any closing
16 argument?

17 MR. SCHILLER: Nothing.

18 THE HEARING OFFICER: We have
19 discussed a post-hearing briefing schedule off the
20 record, and due to various trials and scheduled
21 vacations, it's somewhat of a protracted briefing
22 schedule, but what we have come up with is on June
23 18th, 2004, the petitioner's brief is due, on July
24 23rd, 2004, respondents brief is due, and on August

1 17th petitioner's reply, if any, is due. And that's
2 based on the facts that, I think, the transcript
3 will be ready on or before May 24th.

4 Mr. Kim, did you have anything to
5 say?

6 MR. KIM: No. Mr. Schiller and I were
7 discussing the copy of the petition that we should
8 provide to you.

9 MR. SCHILLER: We both have a copy.

10 THE HEARING OFFICER: Okay.

11 MR. SCHILLER: But, unfortunately,
12 both of them have writing on them.

13 THE HEARING OFFICER: Okay.

14 MR. SCHILLER: So we can give you a
15 copy and substitute a clean copy, whatever you'd
16 like us to do.

17 THE HEARING OFFICER: Yeah.

18 MR. KIM: Yeah, whatever you'd like.
19 I mean, I assume the Board's file copy is probably
20 clean, but I don't know how easy it is to get to
21 that.

22 THE HEARING OFFICER: Yeah. See, the
23 problem is I'll want both parties to take a look at
24 it before I go physically and take it out of the

1 file and copy it. I mean this may be all just, you
2 know, moot, or a crazy exercising, but what I would
3 prefer is one of the parties, you can take it out of
4 the master file, make a copy of it, and then give it
5 to me, and it will be marked Hearing Officer Exhibit
6 No. 21.

7 MR. SCHILLER: Okay.

8 MR. KIM: That's fine.

9 THE HEARING OFFICER: I do want you to
10 take a look at it instead of me just going in and
11 pulling it out of the file.

12 MR. SCHILLER: Okay.

13 MR. KIM: That's fine.

14 THE HEARING OFFICER: With that said,
15 and hopefully we can get the petition in the next
16 couple of days, if not today, I want to thank both
17 parties for their civility and professionalism, and
18 have a great time on vacation Mr. Schiller, and you,
19 too, Mr. Kim.

20 MR. SCHILLER: Thank you.

21 MR. KIM: Thank you.

22

23

24

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at
7 the hearing aforesaid, and that the foregoing is a
8 true, complete and correct transcript of the
9 proceedings of said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 17th day of
14 May, 2004.

15

16

17 Certified Shorthand Reporter

18

19 C.S.R. Certificate No. 84-4327.

20

21

22

23

24