

ILLINOIS POLLUTION CONTROL BOARD
May 18, 1995

HERRIN SECURITY BANK,)
)
 Complainant,)
)
 v.) PCB 94-178
) (Enforcement - Land)
 SHELL OIL COMPANY,)
)
 Respondent.)

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a motion to stay proceedings filed by complainant Herrin Security Bank (Herrin) on May 1, 1995. Respondent Shell Oil Company filed a response to the motion for stay on May 3, 1995, opposing grant of the stay. Herrin filed a reply to the response accompanied by a motion for leave to file on May 16, 1995. The Board hereby grants complainant's motion for leave to file and accepts its reply.

In the motion for stay, Herrin seeks a stay pending an eligibility/deductibility determination by the Office of the State Fire Marshal, in order to determine whether cleanup costs at the site can be reimbursed from the Leaking Underground Storage Tank Fund (Fund). In support of the motion, Herrin states that it was not aware the tanks located at the site were registered, and thus eligible for reimbursement. Herrin states that, attached to a letter faxed by respondent's counsel to complainant's counsel was a "Notification for Underground Storage Tanks", which indicated that 5 tanks at the site, including four gasoline and one used oil tank, were registered by Shell as the owner. Complainant thus asserts that the tanks may be eligible for reimbursement from the Fund with a \$10,000 deductible. Complainant asserts that it is prudent to determine whether access to the Fund is possible prior to incurring additional costs, since it would significantly reduce the damages sought in this action.

Respondent Shell opposes the stay. Shell states that it has expended "tens of thousands of dollars" to defend itself in this action. Shell contends that the tank registration form, which it supplied to Herrin, demonstrates that there was no kerosene or diesel fuel tanks on the property, as asserted by Herrin in its complaint. Shell asserts that it was not the owner or operator of the site, and that Herrin is aware of this. Shell further asserts that it is currently scheduling evidence depositions which are intended to show that there was no release, that Shell did not cause or contribute to a release, and that the remediation undertaken was unnecessary. Shell asserts that it would be unfair and unjust to require it to continue with this cause while complainant pursues reimbursement from the Fund.

In its reply, Herrin disputes the factual assertions made by Shell in its brief. Herrin asserts that it is seeking the stay in order to seek reimbursement from the Fund, which, if successful, will mitigate the damages sought.

As described above, the parties have demonstrated that certain factual disputes exist concerning the site. However, the Board need not consider or attempt to resolve those disputes at this time. We find that respondent Shell has not demonstrated that it will be prejudiced by the grant of a stay in this matter. Furthermore, complainant has stated, "If the Bank is able to gain access to the Fund, the additional time and cost associated with addressing this claim may be unnecessary." Therefore, while the Board is aware that we could proceed to determine liability in this matter prior to determining the appropriate damages, we find that complainant has demonstrated that allowing it to submit an eligibility/deductibility application to OSFM in order to seek reimbursement from the Fund may contribute to the expeditious resolution of this action. Accordingly, the motion for stay is hereby granted for a period of seventy-five days from the date of this order to allow complainant to seek an eligibility/deductibility determination from OSFM. At the expiration of this time period, the parties are to submit status reports to the hearing officer assigned to this matter. The hearing officer shall then proceed accordingly.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of May, 1995, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board