

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1983

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 82-122
)
BI-PETRO REFINING COMPANY, INC.,)
a Delaware corporation,)
)
Respondent.)

MS. GWENDOLYN W. KLINGLER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MOHAN, ALEWELT & PRILLAMAN (MR. FRED C. PRILLAMAN, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the October 5, 1982 Complaint brought by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that the Respondent: (1) failed to submit discharge monitoring reports to the Agency containing monitoring results for effluent discharged from Outfall 001 for 8 specified months between August, 1978 and June, 1981; (2) failed to submit discharge monitoring reports containing monitoring results for effluent discharged from Outfall 002 for 15 specified months between August, 1978 and June, 1981; (3) failed to submit monitoring results for concentrations of oil and grease in effluent discharged from Outfall 001 for 13 specified months between May, 1979 and August, 1980; (4) failed to submit monitoring results for concentrations of oil and grease in effluent discharged from Outfall 002 for 5 specified months between October, 1979 and August, 1980; (5) failed to submit discharge monitoring reports containing monitoring results for effluent discharged from Outfalls 001 and 002, in a timely manner, for 9 specified months between December, 1977 and December 1980; and (6) submitted unsigned discharge monitoring reports for 9 specified months between March, 1978 and December, 1978 in violation of the terms and conditions of its NPDES Permit No. IL 0004758 and 35 Ill. Adm. Code 305.102(a); 305.102(b); and Section 12(f) of the Illinois Environmental Protection Act (Act).

Count II alleged that: (1) on 6 specified dates between June 4, 1979 and February 24, 1981, the Respondent caused or allowed the discharge from Outfall 001 of effluent exceeding by more than 5 times the allowable concentration limit of 10 mg/1 of BOD₅ (i.e., the concentration of BOD₅ on those 6 dates ranged from 72 mg/1 to 725 mg/1); (2) on February 18, 1981, the Respondent caused or allowed the discharge from Outfall 001 of effluent exceeding by more than 5 times the allowable concentration limit of 2.0 mg/1 for total iron (i.e., the discharge contained a concentration of 54.1 mg/1 of total iron); (3) on November 19, 1979 and February 18, 1981, the Respondent caused or allowed the discharge from Outfall 001 of effluent exceeding by more than 5 times the allowable concentration limit of 0.3 mg/1 of phenols (i.e., the effluent contained a concentration of 6.6 mg/1 of phenols on November 19, 1979 and a concentration of 19.0 mg/1 of phenols on February 18, 1981); and (4) on February 18, 1981, the Respondent caused or allowed the discharge from Outfall 001 of effluent having a pH value of 2.6 which was outside the required range of pH values (i.e., between a pH of 6 and a pH of 9) in violation of 35 Ill. Adm. Code 304.104(a); 304.104(b) and 304.125(a) and Section 12(a) of the Act.

Count III alleged that, on 5 specified dates between June 4, 1979 and February 24, 1981, the Respondent caused or allowed the discharge from Outfall 001 of effluent having an unnatural color, odor, and turbidity in violation of 35 Ill. Adm. Code 305.106 and Section 12(a) of the Act.

Count IV alleged that, on February 18, 1981 and February 24, 1981, the Respondent caused or allowed the discharge of effluent from its facility which caused water quality concentration standards for ammonia nitrogen, total copper, total iron, phenols and silver to be exceeded in Coal Creek and its unnamed tributary (as well as causing a violation of water quality concentration standards for total dissolved solids on February 24, 1981) in violation of 35 Ill. Adm. Code 302.203; 302.208; and 304.105 and Section 12(a) of the Act.

Count V alleged that, on 5 specified dates between January 17, 1979 and February 24, 1981, the Respondent caused or allowed the discharge of effluent from its facility which caused the presence of visible oil, hydrocarbon odor, and turbidity in Coal Creek and its unnamed tributary in violation of 35 Ill. Adm. Code 302.203 and Section 12(a) of the Act.

A hearing was held on October 13, 1983. The parties filed a Stipulation and Proposal for Settlement on November 7, 1983.

The Respondent, Bi-Petro Refining Company, Inc. (Bi-Petro), is a Delaware corporation duly authorized by the Illinois Secretary of State to transact business in Illinois. Bi-Petro owns

and operates a facility located west of U.S. Route 51 just south of the City of Pana in Christian County, Illinois.

The Respondent's 46-acre, fenced property, which is located near the City of Pana's sewage treatment plant, is currently used to store petroleum products such as hexane and to service trucks that haul crude oil. The company's site was formerly used as an oil refinery. After Bi-Petro bought the refinery in 1976, the company engaged in oil refining operations. However, Bi-Petro ceased to conduct any oil refining activities after December of 1979 (with the sole exception of a brief time period between February, 1981 and May, 1981). (Stip. 2-3).

At the present time, the majority of the Respondent's site is not being used and there are no plans to reactivate the refinery operation. Additionally, the rail service adjacent to the refinery has been abandoned (thereby reducing the likelihood of any future large bulk chemical storage at the property). The Respondent's facility presently includes various refinery equipment, multiple storage tanks, and oil separation equipment on the east side (east oil separator) and west side (west oil separator) of the company's property. (Stip.3; see: Exhibit 1). The storage tank area in containment encompasses 15 acres of land, while the process area drainage outside the containment dikes covers 15.3 acres.

The discharge of effluent from the Respondent's facility is via Outfall 001 following the west oil separator and via Outfall 002 following the east oil separator. (Stip. 3). Effluent containing contaminants is discharged from the company's facility into an unnamed ditch which leaves the Respondent's property on the west side and follows the Illinois Central Gulf Railroad tracks down to a point where it joins Coal Creek. Coal Creek, which is fed from a spillway from Miner's Lake, is tributary to Beck's Creek which is tributary to the Kaskaskia River upstream of Lake Carlyle. Both the unnamed ditch and Coal Creek have no flow during dry weather. (See: Exhibit 1).

Effluent discharges from Outfalls 001 and 002 were made pursuant to NPDES Permit No. IL 0004758 which was issued by the Agency on October 21, 1977. Prior to the expiration of its NPDES Permit on September 30, 1982, the Respondent submitted an application for permit renewal to the Agency. As of this date, the Agency has not renewed the NPDES Permit, and the Respondent has agreed to reapply for this permit by February, 1984 in accord with its agreed-upon compliance plan. (Stip. 3).

The proposed settlement agreement provides that the Respondent admits the violations alleged in the Complaint and agrees to: (1) cease and desist from further violations; (2) follow

a specified compliance program and schedule of design and construction work to prevent the improper discharge of contaminants; and (3) pay a stipulated penalty of \$5,000.00. (Stip. 8-14; see: Exhibits 1-4 and Exhibits A, B, and C).

The total estimated cost of the improvements that the Respondent will make to protect the environment is approximately \$200,100.00. (Stip. 13). The cost breakdown is as follows: (1) engineering and inspection work--\$30,500.00; (2) railcar loading dock clean-up work--\$30,000.00; (3) improvements to the west oil separator--\$26,500.00; (4) improvements to eliminate the east trap--\$25,750.00; (5) additional wastewater storage via lagoon excavation and transfer piping--\$24,500.00; (6) sewer manholes and inlets--\$11,950.00; (7) improvements to the fire lagoon for ultimate disposal of oil (including clay liner, seepage drains, and monitoring wells)--\$10,500.00; (8) truck loading dock clean-up work--\$7,500.00; (9) seal coating of road surfaces--\$7,000.00; (10) site work (including ditch cleaning, cut dike earthwork, and small culvert installation)--\$7,000.00; (11) dike area valve improvements (including the clearing of buried valves and installation of new valves)--\$2,000.00; and (12) construction of brine water storage (holding) facilities--\$1,500.00. (See: Exhibit 1). Additionally, \$15,400.00 is the estimated cost of various construction contingencies which may occur during the installation of the previously enumerated improvements.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement generally acceptable under 35 Ill. Adm. Code 103.180.

However, the Board feels that paragraph "J" on page 13 of the Stipulation is inappropriate and should be entirely deleted from the settlement agreement. Paragraph "J" includes somewhat ambiguous language in a covenant-not-to-sue which purports to estop the Agency from doing anything for further cleanup beyond the compliance plan. The Board believes that this provision may leave the public vulnerable to undetected problems at the site (such as contamination of groundwater which might be subsequently detected, etc.) and is therefore against prudent public policy. Accordingly, the Board will modify the settlement agreement by deleting paragraph "J".

A certificate of acceptance and agreement to be bound by the modified Stipulation has been included as paragraph 6 of the Board's Order. If the parties do not wish to sign the certificate, the Board intends to reject the Stipulation in toto and remand the case to the parties for further proceedings.

The Board finds that the Respondent, Bi-Petro Refining Company, Inc., has violated 35 Ill. Adm. Code 302.203; 302.208;

304.104(a); 304.104(b); 304.105; 304.125(a); 305.102(a); 305.102(b); and 305.106 and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to cease and desist from further violations; to follow the specified compliance plan and schedule; and to pay a stipulated penalty of \$5,000.00.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, Bi-Petro Refining Company, Inc., has violated 35 Ill. Adm. Code 302.203; 302.208; 304.104(a); 304.104(b); 304.105; 304.125(a); 305.102(a); 305.102(b); and 305.106 and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist from further violations.

3. Within 35 days of the date of the Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$5,000.00 which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

4. Paragraph "J" on page 13 of the Stipulation and Proposal for Settlement is hereby deleted.

5. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement, as modified, filed on November 7, 1983, which is incorporated by reference as if fully set forth herein.

6. Within 45 days of the date of this Order, the parties shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Compliance Assurance Section, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This 45 day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read

the Order of the Illinois Pollution Control Board in PCB 82-122 dated December 15, 1983, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Illinois Environmental
Protection Agency

Bi-Petro Refining Company, Inc.

By: Authorized Agent

By: Authorized Agent

Title


Title

Date

Date

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15th day of December, 1983 by a vote of 7-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board.