

No. 212

OIL CONSERVATION BOARD—SEWAGE SYSTEMS AT OIL REFINERIES

Held: The Oil Conservation Board is not authorized by law to provide building requirements for a crude oil refinery, such as protection of tanks, separate diking of tanks, installation of sewerage systems or regulations for weed control.

August 20, 1941.

Mr. R. P. Jackson, Secretary
Oil Conservation Board
State of Montana
Ford Building
Post Office Box 1122
Great Falls, Montana

Dear Mr. Jackson:

You have written to this office as follows:

"The Oil Conservation Board has before it a complaint filed by a citizen of Montana who resides near a crude oil refinery located at a site remote from any oil or gas producing field and outside of the limits of any city or town. The complaint may be summarized as follows, viz.:

"1. The refinery is not built according to legal requirements so that the people who live near it may have adequate protection in all ways.

"2. Unprotected tanks constitute a public menace.

"3. All tanks are not separately diked and all other protective devices provided.

"4. A sewerage system should be provided to take care of the overflow and spilled oil for the protection of land and water supply in the neighborhood.

"5. The premises should be kept clear of refuse and weeds as a measure of fire protection and weed control."

You have submitted to us the three following questions and have asked us to give you our opinion:

"1. Is the Oil Conservation Board authorized by law to cause an investigation of the complaint to be made on behalf of the State of Montana?

"2. If the answer to question one is "No," that would, of course, dispose of the matter as far as any official action by this board is concerned. But, in that case, we would appreciate your advice, or suggestion, as to the state department or official to which, or to whom, the complaint might be properly referred for consideration.

"3. If the answer to question one should be "Yes," is the Oil Conservation Board authorized to issue any notice, or order, directed to the refiner, or his or its agent in charge of the plant, specifying the remedial measures, if any, that the Board or its agents might conclude to be in order?"

By Chapter 18 of the Laws of the Extraordinary Session of 1933, the Legislature provided for the creation of the Oil Conservation Board. The enacting clause of that chapter and the preamble thereto read as follows:

"An Act to Prohibit and Prevent the Waste of Crude Petroleum in the State of Montana; Creating an Oil Conservation Board; Providing for the Appointment of the Members of Said Board; Providing the Powers, Duties and Authority of Said Board and the Members

Thereof; Providing for the Filing and Hearing of Complaints Concerning Waste of Crude Petroleum, and for Oaths, Subpoenas and Depositions; Providing for the Co-Operation of Said Board with the Government of the United States and Department or Bureau Thereof in the Administration and Enforcement of the National Industrial Recovery Act and Any Order, Rule, Regulation or Code, Promulgated Thereunder insofar as Relates to the Petroleum Industry; Providing for the Enforcement of the Act and the Rules, Regulations and Orders of the Said Board and Creating a Fund for the Purposes of Said Act and Providing for the Assessment and Collection Thereof.

PREAMBLE

"That crude petroleum is essential to and indispensable in the business and economic life of the people of the State of Montana; that there is an over production of crude petroleum in the United States which is resulting in great waste and it is necessary to conserve the petroleum resources of the state and to prevent physical and economic waste for the benefit of the consumers and producers; and to prevent the growth of monopoly resulting from unfair competitive practices; that a national emergency exists and the regulations and supervision of the productions and marketing of crude petroleum is being carried on by the Government of the United States through its various departments and agencies under provisions of the National Industrial Recovery Act, and that it is desirable that the State of Montana co-operate with the Government of the United States in the administration of the Act and the Code of Fair Competition adopted pursuant to the provisions thereof, **and for that purpose this Act is adopted.**"

From a reading of the foregoing, it is the opinion of this office the legislature was passing an act for the purpose of prohibiting and preventing the waste of crude petroleum in the State of Montana and creating a board to work with the agencies of the United States Government to prevent the waste of crude petroleum in this state.

In my opinion, the Oil Conservation Board is not authorized by law to cause an investigation of the complaint to be made on behalf of the State of Montana.

In answer to your question two, it is my opinion this complaint should be lodged with the county attorney, as it might be that the operation of the refinery in question constitutes a public nuisance.

As regards the complaint which is numbered "5," relative to keeping the premises clear of refuse and weeds as a measure of fire protection and weed control, your attention is directed to Chapter 90, Laws of 1941, which, briefly, provides the county commissioners are in charge of weed control in their respective counties.

Sincerely yours,

JOHN W. BONNER
Attorney General