

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1995

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 96-55
)	(Enforcement-Air)
LAFARGE CORPORATION,)	
a Maryland corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD:

This matter comes before the Board upon an three-count complaint filed September 11, 1995, by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency (Agency) and the People of the State of Illinois, against LaFarge Corporation (LaFarge), a Maryland corporation regarding its facility, located at County Road 100 N and 300 E, Joppa, Massac County, Illinois. The complaint alleges that LaFarge has violated Sections 9(a), 9(b) and 9.1(d)(1) of the Illinois Environmental Protection Act (Act), 415 ILCS 5/9(a), 5/9(b), 5/9.1(d)(1) and 35 Ill. Adm. Code 201.141 by causing or allowing air pollution including opacity violations and, by violating several conditions of its operating permits.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint Motion requesting relief from the Act's hearing requirement on September 11, 1995. The Board published a notice of the waiver on September 20, 1995; no objection to granting of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a Stipulation and Settlement Agreement on September 11, 1995. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. LaFarge denies the alleged violations and agrees to pay a civil penalty of one hundred thousand dollars (\$100,000.00).

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

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

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and LaFarge, concerning its facility, located at County Road 100 N and 300 E, Joppa, Massac County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) LaFarge, shall pay the sum of one hundred thousand dollars (\$100,000.00) within 30 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face LaFarge's Federal Employer Identification Number and that payment is directed to the Environmental Protection Trust Fund.

A copy of the payment transmittal and check shall be sent to:

Office of the Attorney General
Environmental Bureau
500 S. Second Street
Springfield, Illinois 62706

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

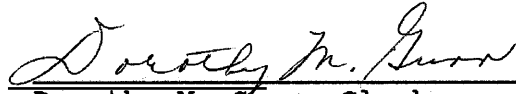
- 3) LaFarge shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

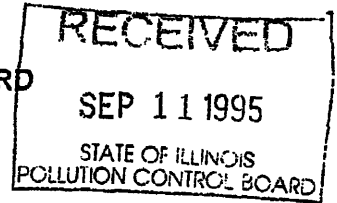
Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19th day of October, 1995 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MASSAC COUNTY, ILLINOIS



PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 LAFARGE CORPORATION,)
 a Maryland corporation,)
)
 Respondent.)

PCB No. 96-55

STIPULATION AND PROPOSAL FOR SETTLEMENT

Pursuant to 35 Ill. Adm. Code 103.180, the following Stipulation and Proposal for Settlement entered into between the complainant, People of the State of Illinois, on behalf of the Illinois Environmental Protection Agency ("Agency"), and the respondent, Lafarge Corporation ("Lafarge"), is tendered for approval by the Illinois Pollution Control Board ("Board"). It is expressly understood and agreed to, by and between Lafarge, James E. Ryan, Attorney General of the State of Illinois ("Attorney General"), and the Agency, that the agreements, stipulations and statements herein contained are not binding on the parties, and shall be deemed null and void, in the event such approval by the Board is not obtained, or in the event additional terms or conditions which are unacceptable to the parties, are imposed by the Board. This Stipulation and Proposal for Settlement is made for the purposes of Settlement only and putting an end to litigation, and neither the fact that a party has entered into this Stipulation and Proposal for Settlement, nor any of the facts stipulated herein, shall be introduced into evidence or construed as an admission of fact or law in any other proceedings conducted before the Board or outside of the jurisdiction of the Board except to

enforce the terms hereof by the parties to this agreement and as evidence of previously adjudicated violations for purposes of subsection 42(h) of the Illinois Environmental Protection Act ("the Act") (415 ILCS 5/42(h)). Subject to the foregoing understanding and agreement, it is further agreed as follows:

I.

STIPULATION OF FACTS

1. Respondent, Lafarge met with representatives of the Agency and the Attorney General's Office on January 31, 1995.

2. Lafarge is a Maryland corporation qualified to do business in Illinois.

3. Lafarge owns and operates a facility located at County Road 100 N and 300 E in Joppa, Massac County, Illinois ("the facility"). The facility is engaged in the manufacture and production of cement.

4. In connection with its cement production facility, Lafarge operates two large kilns and associated equipment, of which Kiln #2 is subject to New Source Performance Standards ("NSPS"), 40 C.F.R. Part 60, Subpart F.

5. On the following dates, the State alleges that Lafarge's operation of Kiln #2 resulted in emissions exceeding 20% opacity:

<u>Date of Excess Emissions Report (EER)</u>	<u>% of Total Operating Time (with opacity greater than 20%)</u>
4/30/93 - 1st quarter '93	5.68
6/30/93 - 2nd quarter '93	3.81
11/12/93 - 3rd quarter '93	7.08
2/1/94 - 4th quarter '93	7.22
5/4/94 - 1st quarter '94	7.98
8/2/94 - 2nd quarter '94	5.47

6. The State alleges that by operating Kiln #2 in excess of 20 percent opacity during the period of January 1993 to June 1994, Lafarge has violated subsection 9(a) of the Act (415 ILCS 5/9(a) (West 1992)).

7. Standard condition 7 of permit number 77070037 requires Lafarge to maintain all equipment covered by its permits in a manner such that the equipment will not cause a violation of the Act or regulations.

8. Standard condition 9 of permit number 77070037 prohibits continued operation during malfunctions, breakdowns, or startups if such operation would cause a violation of an applicable emission standard or permit limitation.

9. The State alleges that Lafarge operated Kiln #2 during malfunctions, breakdowns, and startups, and thereby violated subsection 9(b) of the Act (415 ILCS 5/9(b) (West 1992)), and standard conditions 7 and 9 of permit number 77070037.

10. Special condition 2 of permit number 77070037 limits opacity to 20 percent.

11. Special condition 5 of permit number 77070037 limits operation of Kiln #2 to when the electrostatic precipitator ("ESP") is functioning properly and opacity is less than 20 percent, except during authorized malfunctions.

12. The State alleges that Lafarge operated Kiln #2 with opacity in excess of 20 percent during periods other than authorized malfunction, and thereby violated subsection 9(b) of the Act (415 ILCS 5/9(a) (West 1992)) and special conditions 2 and 5.

13. 40 C.F.R. Part 60 provides standards for performance for new stationary sources.

14. The State alleges that, by emitting excess opacity beginning the first quarter of 1993 through the second quarter of 1994, and by failing to maintain its Kiln #2 in a manner consistent with good air pollution control practices for minimizing emissions, Lafarge has

violated subsection 9.1(d) of the Act (415 ILCS 5/9.1(d) (West 1992)) and 40 C.F.R. §60.11(d).

15. The State alleges that, by causing emissions to be discharged from its Kiln #2 with greater than 20 percent opacity beginning the first quarter of 1993, through the second quarter of 1994, Lafarge has violated subsections 9.1(d) of the Act (415 ILCS 5/9.1(d) (West 1992)) and 40 C.F.R. §60.62(a).

16. The State alleges that, by failing to operate the continuous opacity monitor 6.72 percent of the total operating time in the fourth quarter of 1993, Lafarge has violated subsection 9.1(d) of the Act (415 ILCS 5/9.1(d) (West 1992)) and 40 C.F.R. §60.63(b).

17. Lafarge denies the State's allegations, but for the purposes of settlement and compromise, has agreed to entry of this Stipulation and Proposal for Settlement.

II.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Subsection 33(c) of the Act (415 ILCS 5/33(c)) provides:

- c. In making its orders and determinations, the Board shall take into consideration bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
 1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 2. the social and economic value of the pollution source;
 3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
 4. the technical practicability and economic reasonableness or reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 5. any subsequent compliance.

In response to these factors, the parties state as follows:

1. Lafarge's above cited violations of the Act and regulations, as alleged by the State, impacted the complainant, in that the excess particulate matter emitted from Kiln #2 is a contaminant that contributes to air pollution in Illinois, and the cement dust emissions are skin and eye irritants and may create a health hazard.

2. Lafarge's facility is of economic and social value to the surrounding community, to Lafarge's employees, and to the customers of Lafarge.

3. Lafarge's facility is suitable to the area in which it is located (based upon the presumption the facility operated in compliance with the Act).

4. By refurbishing the ESP and constructing a new baghouse, Lafarge has reduced or eliminated the emissions resulting from the pollution source at issue.

5. By refurbishing the ESP and constructing a new baghouse, Lafarge has taken steps to remedy the above-detailed instances of noncompliance.

III.

DETERMINATION OF APPROPRIATE CIVIL PENALTY

Subsection 42(h) of the Act (415 ILCS 5/42(h)) provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:
1. the duration and gravity of the violation;
 2. the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
 3. any economic benefits accrued by the violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and any other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. Lafarge has upgraded Kiln #2 to come into compliance, and has paved approximately 50% of its lot to control fugitive dust.
2. Lafarge has refurbished the ESP at issue, and constructed a new baghouse for Kiln #2.
3. The penalty assessed in this case takes into account any economic benefit received by Lafarge in delaying its compliance expenditures.
4. A civil penalty of one hundred thousand dollars (\$100,000) will deter Lafarge from further violations of this type. Further, this penalty will aid the Agency's enforcement of the Act and Board's Rules and Regulations as against persons similarly subject to the Act.
5. There are no known adjudicated violations of the Act by the violator.

IV.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of the respondent to comply with any other federal, state or local regulations, including, but not limited to, the Act (415 ILCS 5/1 et seq.) and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

V.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act.

VI.

APPLICABILITY AND AUTHORIZATION

This Stipulation and Proposal for Settlement shall apply to and be binding upon the complainant, the Agency, Lafarge, and the officers, agents, employees, servants, successors and assigns thereof. The respondent shall not raise as a defense to any action to enforce this Stipulation and Proposal for Settlement the failure of any of the above to take such action as shall be required to comply with the provisions of this Stipulation and Proposal for Settlement. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

VII.

COVERED MATTERS

This Stipulation and Proposal for Settlement covers all claims asserted in the complaint filed herein concerning violations of the Act (415 ILCS 5/1 et seq. (West 1992)) and the regulations promulgated thereunder. Covered matters do not include:

- i) Criminal liability;
- ii) Claims based on respondent's failure to meet the requirements of this Stipulation and Proposal for Settlement;
- iii) Liability for future violation of state, local, federal, and common laws and/or regulations; and

- iv) Any future liability for natural resource damage or for removal, cleanup, or remedial action as a result of a release of hazardous substances or the liability of respondent under subsection 22.2(f) of the Act (415 ILCS 5/22.2(f) (West 1992)), or under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9401-9675).

VIII.

NO ADMISSION OF LIABILITY

This is entered into for the purpose of settling and compromising disputed claims without the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, Lafarge and any successor or assign do not admit any fact, statement, legal conclusion, or past or present liability or violation of any law or regulation, and this Stipulation and Proposal for Settlement shall not be interpreted as including any such admission.

IX.

PROPOSAL FOR SETTLEMENT

1. Lafarge shall pay a civil penalty of one-hundred thousand dollars (\$100,000.00) within thirty (30) days of the Board's approval and adoption of this Stipulation and Proposal for Settlement. The penalty shall be made by certified check, payable to the Treasurer of the State of Illinois, for deposit in the Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road, P.O. Box 19276
Springfield, Illinois 62794-9276

The name, case number, and Lafarge's Federal Employer Identification Number ("FEIN") shall appear on the certified check. For the purpose of payment and collection, Lafarge may be reached at the following address:

4000 Town Center, Suite 2000
P.O. Box 887
Southfield, Michigan 48037

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

2. Lafarge shall diligently comply with all applicable requirements, and shall cease and desist from violations of the Act (415 ILCS 5/1 et seq. (West 1992)), the Board's rules and regulations (35 Ill. Adm. Code Subtitles A through H (1992)) and any and all federal laws and regulations.

3. Final approval of this Stipulation and Proposal for Settlement and compliance herewith shall constitute full accord, satisfaction, and Settlement of all civil liability of Lafarge under the Act and the Board's Rules and Regulations, which was the subject matter of the Complaint filed herein.

4. In consideration of the payment by Lafarge of a \$100,000 penalty and the action taken to date by Lafarge, the State releases, waives and discharges Lafarge from any violations of the Act or the state and federal regulations which were the subject matter of the Complaint herein.


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
ATTORNEY GENERAL

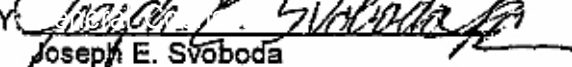
MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: 8/10/95

BY: 
Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

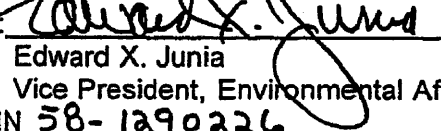
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: 8/09/95

BY: 
Joseph E. Svoboda
General Counsel
Division of Legal Counsel

LAFARGE CORPORATION

DATED: 8/18/95

BY: 
Edward X. Junia
Vice President, Environmental Affairs
FEIN 58-1290226