

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

PEOPLE OF THE)	
STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 93-57
)	(Enforcement)
ILLINOIS AYERS OIL COMPANY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board upon a complaint filed March 19, 1993, on behalf of the People of the State of Illinois, by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against Illinois Ayers Oil Company (Ayers), located in Hancock County, Illinois. The complaint alleges that Ayers has violated 35 Ill. Adm. Code 731.163(b) of the Board's rules and regulations.

On October 25, 1993, the parties filed a joint motion requesting relief from the Act's hearing requirement, pursuant to Section 31(a)(1). Notice of the request for waiver was published by the Board on November 6 and 8, 1993; no objection to grant of the waiver was received. Waiver of hearing is granted by the Board via today's opinion and order.

Ayers admits to a past violation of 35 Ill. Adm. Code 731.163(b), in that it failed to submit the information required by that section to the Agency within 45 days of confirmation of a release of petroleum from one or more of Ayers' underground storage tanks. Ayers agrees to pay a civil penalty of \$4,800.00.

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.¹ 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 Environmental Protection Act and the Board's pollution control regulations.

The Board notes that the People requested, in the March 19, 1993 complaint, that the Board award the People its costs,

¹ The Board notes that the settlement agreement sets forth the "old" Section 33(c) factors. The consideration of economic benefit, formerly found at Section 33(c)(5), is now found only at Section 42(h)(3).

including expert witness, consultant, and attorney fees, incurred in the action. However, there is no mention of this request in the stipulation and settlement agreement. Section 42(f) of the Act allows the Board to award such costs and fees where a person has committed a "wilful, knowing or repeated violation of the Act." (415 ILCS 5/42(f) (1992).) The Board finds no evidence in this record that Ayers committed a wilful, knowing, or repeated violation of the Act. We continue to urge the People to develop the record to support such a finding, especially where (as here) the complaint originally requests the award of costs and fees.

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, the Illinois Environmental Protection Agency, and Illinois Ayers Oil Company, concerning Ayer's operations in Hancock County, Illinois. The stipulation and settlement agreement are incorporated by reference as though fully set forth herein.
2. Illinois Ayers Oil Company shall pay the sum of four thousand eight hundred dollars (\$4,800.00). The penalty shall be paid by certified check to the Environmental Protection Trust Fund and submitted in six monthly installments of eight hundred dollars (\$800.00) each. The first installment shall be submitted within 30 days of the date of this order. Such payment shall be sent to:

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

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

Environmental Control Division
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

Illinois Ayers Oil Company shall also write the name and number of the case, its Federal Employer Identification Number, and the identification of the site on each certified check.

Any such penalty not paid within the time prescribed shall

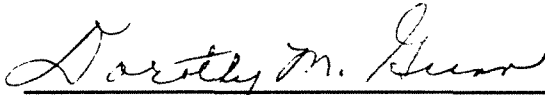
incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1992)) as now or hereafter amended, from the date of payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. Illinois Ayers Oil Company shall perform the site remediation pursuant to the corrective action plan, as conditionally approved by the Illinois Environmental Protection Agency.
4. Illinois Ayers Oil Company shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions 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 16th day of December, 1993, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board