

ILLINOIS POLLUTION CONTROL BOARD  
September 9, 1993

PEOPLE OF THE )  
STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 92-69  
 ) (Enforcement)  
PATTERSON GEAR & )  
MACHINE, INC. )  
 )  
Respondent. )

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

This matter is before the Board upon a complaint filed May 7, 1992 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 Patterson Gear & Machine, Inc. (Patterson), located in Rockford, Winnebago County, Illinois. The complaint alleges that Patterson has violated Section 21(i) of the Environmental Protection Act (Act) (415 ILCS 5/21(i)), and 35 Ill. Adm. Code 722.141(a) of the Board's rules and regulations.

On July 22, 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 July 28, 1993; no objection to grant of the waiver was received. Waiver of hearing is granted by the Board via today's opinion and order.

Patterson denies the alleged violations, but agrees to pay \$1,500 into the Illinois Hazardous Waste Fund. The Board has authority to impose a penalty where the parties have stipulated to a penalty, but not to a finding of violation. (See, Chemetco, Inc. v. Illinois Pollution Control Board (5th Dist. 1986), 140 Ill. App.3d 283, 488 N.E.2d 639, 643; Archer Daniels Midland v. Pollution Control Board (3rd Dist. 1986), 140 Ill.App.3d 823, 489 N.E.2d 887.

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.

The Board notes that the People requested, in the May 7, 1992 complaint, that the Board award the People its costs, 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 Patterson 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 Patterson Gear & Machine, Inc., concerning Patterson's operations located in Rockford, Winnebago County, Illinois. The stipulation and settlement agreement are incorporated by reference as though fully set forth herein.
2. Patterson Gear & Machine, Inc. shall pay the sum of one thousand five hundred dollars (\$1,500.00) 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 Hazardous Waste 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

Patterson Gear & Machine, Inc. shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

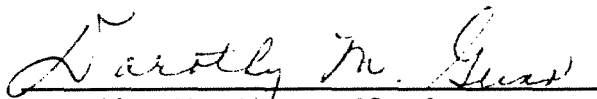
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1992)) as now or hereafter amended, from the date of payment is due until the date payment is received. Interest shall not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

3. Patterson Gear & Machine, Inc. 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 9<sup>th</sup> day of September, 1993, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board