

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
v.)	PCB 91-192
)	(Enforcement)
PRAIRIE MATERIAL SALES,)	
an Illinois Corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

This matter comes before the Board upon a complaint filed October 9, 1991 on behalf of the People of the State of Illinois ("People"), by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against Prairie Material Sales, an Illinois Corporation located in Batavia, Kane County, Illinois. The complaint alleges that Prairie Material Sales has violated Section 9(a) and 9(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) and (b), and 35 Ill. Adm. Code 201.143 of the Board's rules.

Pursuant to 415 ILCS 5/31(a)(1), a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on June 17, 1993. Notice of the waiver was published by the Board on July 7, 1993; no objection to grant of the waiver was received. Waiver of hearing is hereby granted.

A Stipulation and Settlement Agreement was filed by the parties on June 17, 1993. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Prairie Material Sales denies the alleged violations. Prairie Material Sales agrees to pay a civil penalty of Two Thousand, Two Hundred and Fifty Dollars (\$2,250.-00).

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, 140 Ill. App.3d 283, 488 N.E.2d 639, 643 (5th Dist. 1986); and Archer Daniels Midland v. Pollution Control Board, 140 Ill.App.3d 823, 489 N.E.2d 887 (3rd Dist. 1986).

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 Prairie Material Sales, concerning its operations located in Batavia, Kane County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Prairie Material Sales shall pay the sum of Two Thousand, Two Hundred and Fifty Dollars (\$2,250.00) 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 Illinois 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

Prairie Material Sales 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), 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) Prairie Material Sales shall cease and desist from the alleged violations.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 26th day of August, 1993, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board