

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1993

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 90-89
)	PCB 91-123
)	Consolidated
)	(Enforcement)
FRED JOHNSON, JOHNSON & BRIGGS)	
TANK TRUCK SERVICE, a/k/a)	
JOHNSON & BRIGGS TANK TRUCK &)	
HEATER SERVICE,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter comes before the Board upon a complaint filed May 1, 1990 and amended complaint filed July 17, 1990 on behalf of the Illinois Environmental Protection Agency, by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against Fred Johnson, Herman L. Loeb, Johnson & Briggs Tank Truck Service, a/k/a Johnson & Briggs Tank Truck & Heater Service (hereinafter "Johnson & Briggs, Inc."), an Illinois Corporation, located in Albion, Illinois.¹ Respondent Herman L. Loeb was dismissed by Board order on December 17, 1992. The amended complaint alleges that Johnson & Briggs, Inc. has violated subsections 12(g), 21(f), (g) and (j), and 39(e) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1991, ch. 111½, pars. 1012(g), 1021(f), 1021(g) and 1021(j), and 35 Ill. Adm. Code 704.161(a) and (b), 704.201, 704.202, 704.203, 723.111, 723.120(a), (b), (c), (d); 723.121, 723.122(a) and (b), 730.108, 730.112 and 730.113(b) and (c), 809.201 and 809.302(a)(b) of the Board's rules and regulations.

Pursuant to Section 31(a)(1) of the Act, a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on December 7, 1992. Notice of the waiver was published by the Board on December 23, 1992; no objection to grant of the waiver was received. Waiver of hearing is granted by the Board via today's Opinion and Order. Johnson & Briggs,

¹ The Board notes that the stipulation and motion for relief from hearing requirement state that they were filed by the Attorney General on behalf of the People of the State of Illinois. However, the complaint states that it was filed on behalf of the Illinois Environmental Protection Agency. The Board has construed all references to the complainant to mean the Illinois Environmental Protection Agency.

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Inc. denies the alleged violations. Johnson & Briggs agrees to pay a civil penalty of Ten Thousand Dollars (\$10,000.00).

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 Illinois Environmental Protection Agency and Johnson & Briggs, Inc., concerning their operations located in Albion, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Johnson & Briggs, Inc. shall pay the sum of Ten Thousand Dollars (\$10,000.00) 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

Johnson & Briggs, 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, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), as now or hereafter amended, from the date of payment

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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.

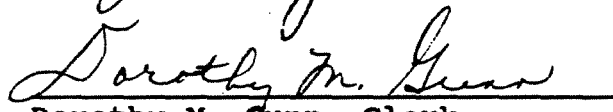
- 3) Johnson & Briggs, Inc. shall cease and desist from the alleged violations.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, Ch 111 1/2, par. 1041) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of January, 1993, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board