

ILLINOIS POLLUTION CONTROL BOARD
February 27, 1992

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 89-180
) (Enforcement)
)
COLWELL/GENERAL, INC.,)
a Delaware Corporation,)
)
Respondent.)

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

This matter comes before the Board upon a complaint filed November 7, 1989 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 Colwell/General, Inc., a Delaware Corporation located in Harwood Heights, Cook County, Illinois. The complaint alleges that Colwell/General, Inc. has violated Section 9(a) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1009(a), and 35 Ill. Adm. Code 215.204(c) of the Board's rules and regulations.

Pursuant to Ill. Rev. Stat., 1990 Supp., ch. 111 1/2, par. 1031(a)(1), a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on December 17, 1991. Notice of the waiver was published by the Board on January 8, 1992; no objection to grant of the waiver was received. Waiver of hearing is granted by the Board via today's Opinion and Order.

A Stipulation and Settlement Agreement was filed by the parties on December 17, 1991. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Colwell/General, Inc. neither admits nor denies the alleged violations. Colwell/General, Inc. agrees to pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00).

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 People of the State of Illinois and the Colwell/General, Inc., concerning its operations located in Harwood Heights, Cook County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) The Colwell/General, Inc. shall pay the sum of Fifteen Thousand Dollars (\$15,000.00) 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

Colwell/General, 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 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.

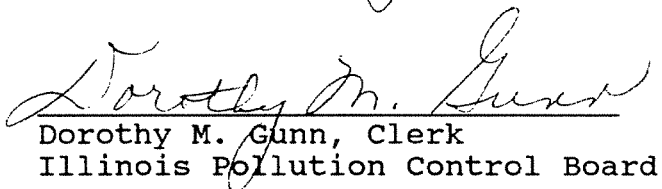
- 3) Colwell/General, Inc. shall cease and desist from the alleged violations.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111½, 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 27th day of February, 1992, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board