

ILLINOIS POLLUTION CONTROL BOARD
February 28, 1991

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 90-180
) (Enforcement)
)
CONTAINER CORPORATION OF)
AMERICA, a Delaware)
corporation,)
)
Respondent.)

WILLIAM D. SEITH APPEARED ON BEHALF OF COMPLAINANT.

LEE R. CUNNINGHAM APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed October 1, 1990 on behalf of the People of the State of Illinois ("People"), by and through the Attorney General of the State of Illinois, against Container Corporation of America ("CCA") located in Carol Stream, DuPage County, Illinois. The complaint alleges that CCA has violated Section 9(a) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, pars. 1001, et. seq., and 35 Ill. Adm. Code 201.141 and 214.401 of the Board's rules and regulations.

Hearing on this matter was held December 31, 1990 in Carol Stream, DuPage County, Illinois. At hearing, the parties submitted a Stipulation and Settlement Agreement ("Agreement"), executed by the parties. On February 13, 1991, the parties submitted an agreed motion to file an Addendum to the Stipulation and Proposal for Settlement. The Addendum discusses the factors found in Section 42 of the Act. The Board today grants that motion. CCA denies the alleged violations.

The parties state in the Agreement that they "believe that the public interest will be best served by resolution of this enforcement action under the terms and conditions provided" (Stip. p. 10) in the Agreement. The Agreement contains several provisions which include a schedule for compliance by March 29, 1991, requirements for quarterly reports and withdrawal of appeals by CCA of two pending cases, one before the Board and one before the Appellate Court. The Agreement also sets forth two consensual payments to the Environmental Trust Fund. One is to

be paid "[s]hould CCA achieve compliance solely through facility closure . . . CCA will make a consensual payment of \$80,000." (Stip. p. 14). In addition, the Agreement provides for financial assurance that the \$80,000 dollar payment will be made upon closure of the facility. The second payment that CCA will make is one of twelve thousand dollars (\$12,000), payment within 30 days of the date of this Opinion and Order.

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 Container Corporation of America ("CCA") concerning CCA'S operations located in Carol Stream, DuPage County, Illinois. The Stipulation and Settlement Agreement are attached and incorporated by reference as though fully set forth herein.
- 2.) CCA shall comply with all provisions set forth in Section VII, paragraphs A-K, and Section VIII of the Stipulation and Settlement Agreement.
- 3.) CCA shall pay the sum of twelve thousand dollars (\$12,000) 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

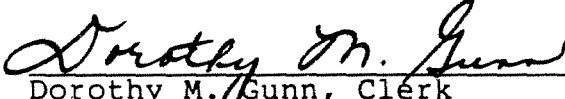
CCA shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, 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.

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 28th day of February, 1991, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board