

ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 88-199
) (Enforcement)
SEEGERS GRAIN, INC.)
)
 Respondent.)

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

This matter comes before the Board upon the expiration of a 30-day stay of decision-making granted to the People of the State of Illinois ("People") on May 10, 1990. The Board has received nothing further from the two parties regarding this matter and assumes, therefore, the record is complete and the matter ripe for decision.

PROCEDURAL HISTORY

A brief re-cap of the procedural history of this case is in order. On December 9, 1988 the Illinois Attorney General's Office filed, on behalf of the People, a complaint against Seegers Grain, Inc. ("Seegers"). The complaint alleges that Seegers violated Section 24 of the Environmental Protection Act ("Act") (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1024) and Section 900.102 of Board rules (35 Ill. Adm. Code 900.102) through noise emissions from certain grain storage operations. A hearing was held on this matter on April 7, 1989 at which time attorneys for the parties represented to the Hearing Officer that the matter was being resolved and that a draft settlement document was already prepared. Testimony was taken from a Seegers representative who outlined several noise abatement steps that had been taken under the oversight of technical experts of the Illinois Environmental Protection Agency. A noise suppression test was to be performed the following week to verify compliance and the parties requested a pre-hearing conference for the following month. Seegers indicated that the monetary penalty was still to be negotiated.

On June 12, 1989 the second hearing was held. At this time the People, by an Assistant Attorney General, submitted a Stipulation of Facts and Proposed Settlement Agreement. It indicated the parties were in "substantial agreement" on it but that the People had not had the opportunity to get a signed copy. When questioned by the Hearing Officer as to whether the People were going to sign it, the People answered affirmatively.

Significant portions of the stipulation were then read into the record. Section X related to the penalty Seegers agreed to pay. The People represented that Seegers agreed to "pay a penalty of \$2,000 into the office of the Illinois Attorney General for environmental enforcement within 30 days from the date on which the Pollution Control Board adopts a final order approving this stipulation and proposed settlement." Payment was to be made by certified check or money order payable to the office of the Illinois Attorney General. The stipulation of facts was entered into evidence as part of the record. The people represented that the Board would receive an executed copy within 3 weeks. The Hearing Officer accepted the proposed settlement and marked it as Exhibit "A". No members of the public attended the hearing.

On December 7, 1989 the parties jointly submitted an executed Stipulation of Facts and Proposed Settlement to the Board. The executed agreement was materially different from the one submitted at the June 12, hearing. Instead of Seegers paying \$2,000 to the Attorney General's Office, the company was now to pay \$1,000 into the Environmental Protection Trust Fund. The agreement was executed by the Chief Assistant Attorney General on behalf of the People and by Robert Seegers as President of Seegers Grain, Inc.

In its Order dated April 12, 1990 the Board noted the above discrepancy and requested comments from the parties concerning the changed terms. On April 23, 1990 Seegers filed its comment in Response to Board Order. Seegers pointed out that at the hearing of June 12, 1989 the parties were only in substantial agreement to the settlement terms. The parties subsequently agreed to the lower penalty amount, Seegers stated. On May 7, 1990, the People filed a Motion to Defer a Decision On This Matter for 30 Days. The motion alleged that the parties found other inconsistencies in the proposal as well and were in the process of amending it. A May 9, 1990 Response to People's Motion to Defer Decision filed by Seegers disagreed with each of the People's contentions and stated it had neither found any "inconsistencies" nor agreed to amend them. The Board granted the People's motion in hopes the matter would be amicably resolved. However, more than thirty days has elapsed without word from either of the parties.

CONCLUSION

The stipulation submitted to the Board and executed by the parties sets forth a full stipulation of all material facts pertaining to the nature, operations and circumstances surrounding the claimed violations. Each of the parties who executed the stipulation had full authority to do so, as recited in the agreement itself. No one has requested the Board to relieve them from the terms of the agreement; no one has claimed it was fraudulently entered into, or was entered into under mistake of fact or law. Seegers does not admit the alleged

violations. Seegers agrees to pay a civil penalty in the amount of \$1,000.

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 Seegers Grain, Inc. concerning Seegers Grain, Inc.'s operations located in Crystal Lake, McHenry County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.

2.) Seegers Grain, Inc. shall pay the sum of One Thousand dollars (\$1,000.00) 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

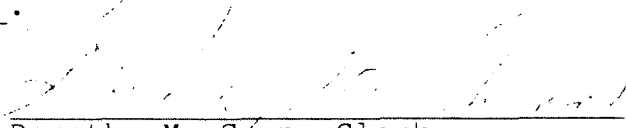
Seegers Grain, Inc. shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, 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.

IT IS SO ORDERED.

Board Members J. Anderson, J. Dumelle, and 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 3rd day of July, 1990, by a vote of 4-3.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board