

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1990

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 90-98
) (Enforcement)
AGGRECON CORPORATION,)
an Iowa corporation,)
)
Respondent.)

APPEARANCE FOR COMPLAINANT BY PAMELA CIARROCCHI, ASSISTANT ATTORNEY GENERAL.

APPEARANCE FOR RESPONDENT BY JEFFREY KINKEAD, AGGRECON CORPORATION.

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

This matter comes before the Board upon a complaint filed May 8 1990 on behalf of the People of the State of Illinois (People), by and through its attorney, Neil F. Hartigan, Attorney General of the State of Illinois, against Aggrecon Corporation, located Mount Carroll, Carroll County, Illinois. The complaint alleges that Aggrecon Corporation has violated Section 9(b) 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 201.143 of the Board's rules and regulations.

Hearing on this matter was held August 2, 1990, in Mount Carroll, Carroll County, Illinois. At hearing, the parties submitted a Stipulation and Settlement Agreement, executed by the parties. The Stipulation sets forth facts pertaining to the nature, operations, and circumstances surrounding the claimed violations. Aggrecon Corporation admits to past violations of Section 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.143 and agrees to pay a civil penalty of two thousand dollars (\$2,000). Aggrecon Corporation further agrees to cease and desist from the alleged violations.

The Board notes that in the transcript of the hearing, where the People are describing the terms of the settlement, the People state: "Respondent admits to the past violations of Section 9(b) of the Act." (Tr. p. 4). Also the complaint as filed on May 8, 1990, alleges only a violation to Section 9(b) of the Act. However, the Stipulation as signed by both parties and as

admitted at hearing provides that the Respondent "admits to the past violations of Section 9(a) and (b) of the Act." (Stip. p. 8). The Board's rules at 35 Ill. Adm. Code 103.210, allow pleadings to be amended to "conform to proof, so long as no undue surprise results that cannot be remedied by a continuance." On August 9, 1990, the Board directed the parties to file with the Board the proper pleading to clarify this issue. The parties were to file such pleading by September 11, 1990. The Board has not received such a pleading. Therefore, the Board finds that the Stipulation signed by both parties is the controlling document and that the parties intent was to amend the pleadings to conform to proof.

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 Aggrecon Corporation, concerning Aggrecon Corporation's operations located in Mount Carroll, Carroll County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2.) Aggrecon Corporation shall pay the sum of two thousand dollars (\$2,000) 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


Aggrecon Corporation 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.

Board Member 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 11th day of October, 1990, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board