

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
v.) PCB 83-61
)
MISSOURI PORTLAND)
CEMENT COMPANY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on a November 3, 1983 complaint filed by the Illinois Environmental Protection Agency (Agency) against the Missouri Portland Cement Company (Missouri Portland). The complaint alleges that Missouri Portland caused the emission of particulate matter into the atmosphere in violation of Sections 9(a) and 9.1(f) of the Illinois Environmental Protection Act (Act) and former Air Pollution Rules 203(b), 203(d)(2)(B), 904, 105(a) and 105(d), now recodified at 35 Ill. Adm. Code 212.322, Illustration C; 212.422; 230.160; 201.149; and 201.263 respectively.

A hearing was held on January 11, 1985 at which time the parties stated their intention to enter into a settlement agreement. The parties summarized the terms of the agreement at hearing and filed a properly signed copy of the Stipulation and Proposal for Settlement on June 19, 1985.

The Stipulation and Proposal for Settlement provide the Board with a statement of facts which the parties agree represents a fair summary of the evidence which would be introduced if a full hearing were held. Specifically, the evidence concerns two kilns owned by Missouri Portland which the Agency contends were operated on various dates during malfunctions so as to emit particulate matter in excess of the allowable hourly emission rate. The terms of settlement provide, however, that with the exception of the admission to a single violation on one date, Missouri Portland denies the violations as alleged in the Agency's complaint. Nonetheless, Missouri Portland agrees to pay a penalty of Twenty Thousand Dollars (\$20,000.00) "but without admitting that any penalty is appropriate or that it has violated applicable provisions of the Act, Board Regulations or its operating permits, except [for the violation admitted to]." (Stip. at 11, as corrected July 2, 1985).

In recent months, the Board has rejected stipulated settlements requesting the Board to impose penalties and to order

compliance actions absent a Board finding of violation, e.g., IEPA v. Chemetco, Inc., PCB 83-2, February 20, 1985. Although Missouri Portland does admit to one violation so as to support the imposition of a penalty, Section 42 of the Act provides for a "civil penalty of not to exceed \$10,000 for [each] violation and an additional civil penalty of not to exceed \$1,000 for each day during which violation continues." Ill. Rev. Stat. 1983, Ch. 111, par. 1042(a). The admitted violation concerns a 20 to 30 minute period on March 26, 1981 during which a malfunction occurred in the air pollution equipment controlling the No. 1 Clinker Cooler. Missouri Portland admits that it failed to immediately report this "malfunction".


Because only one violation is admitted and this violation took place on a single day, the Board is statutorily precluded from imposing the stipulated \$20,000 penalty. Since the agreement requires that it shall be "null and void" unless each and every one of its terms is approved by the Board, the Board hereby rejects the Stipulation Agreement and Proposal for Settlement. The Board orders that hearing in this matter be scheduled within 30 and held within 60 days of the date of this order.

Should the parties determine that they wish to file an amended settlement agreement containing sufficient admissions to support the remedy, or to allow the Board to modify the agreement, they may file within 35 days the appropriate pleadings.

IT IS SO ORDERED.

J. D. Dumelle, R. Flemal and W. Nega dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the the 11th day of July, 1985, by a vote of 4-3.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board