

ILLINOIS POLLUTION CONTROL BOARD

May 23, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-270
)
MARBLEHEAD LIME COMPANY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Respondent Marblehead Lime Company owns and operates a limestone processing plant near Marblehead in Adams County, Illinois. The Environmental Protection Agency on June 30, 1972 filed Complaint alleging that Respondent had caused the excessive discharge of particulates in violation of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution, had caused air pollution in violation of Section 9(a) of the Environmental Protection Act, and had failed to submit a program for the control of air contaminants in violation of Rule 2-2.41 of the Rules.

The parties and numerous witnesses appeared for public hearing on January 29, 1973. Prior to the commencement of the hearing, attorneys for Complainant and Respondent informed the Hearing Officer that an agreement had been reached. The settlement had not been reduced to writing in a final form, but the attorneys explained the basic agreement to the hearing officer and about 15 members of the public who were present. The hearing was adjourned with the understanding that a written Stipulation of Facts as well as certain exhibits would be submitted to the Board.

Because of a long delay in the submission of the Stipulation the Board on January 10, 1974 ordered that the case be set for hearing either on the Stipulation or on the merits absent a stipulation.

Subsequently, Respondent Marblehead Lime Company filed its Motion to Dismiss this proceeding. Complainant did not respond to the Motion to Dismiss. Marblehead Lime states that pursuant to oral agreement the Company had undertaken a program to improve

its facilities and operations at the limestone processing plant in order to reduce the emission of particulate matter. It is claimed that Respondent completed substantially all the work called for in the program and on October 1, 1973 because of a fuel shortage the plant began shutdown. Shutdown was completed on November 1, 1973. Respondent states that the plant remains closed to the date of the filing of the Motion, March 4, 1974.

Respondent further states that on December 10, 1973 Respondent forwarded to the Complainant a form of written Stipulation and Proposal for Settlement. It is reported that Complainant objected to the Stipulation but the specific objections have not been revealed to Respondent's attorney. Marblehead Lime now requests that we enter an order requiring that the Company refrain from causing air pollution at its plant in Marblehead, Illinois "if that plant is ever reopened" and dismissing this proceeding without penalty and with prejudice.

The entry of a cease and desist order, a finding that no penalty is to be assessed and the termination of this proceeding with prejudice it seems to us is not justified by the record. The record neither proves nor disproves the allegations of excessive emissions and air pollution. There is no evidence whatsoever from which we could determine that the Respondent should pay a penalty or should be relieved of that possible burden. The record is inadequate for us to make a decision on the merits of the case.

We believe it is a fair inference, however, that the prosecutor has lost interest in the matter. The failure to conclude this matter by stipulation or hearing and the failure to even respond to Respondent's current motion constitute a failure to prosecute and justify the dismissal of this case.

ORDER

It is Ordered that the above entitled action be dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 23RD day of May, 1974 by a vote of 5 to 0.

Christan L. Moffett