

ILLINOIS POLLUTION CONTROL BOARD
September 20, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-178
)
DE KALB-PFIZER GENETICS,)
)
Respondent.)

JAMES MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
COMPLAINANT.

NEIL F. FLYNN, MARTIN, CRAIG, CHESTER & SONNENSCHIEN, APPEARED ON
BEHALF OF RESPONDENT.

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

This matter comes before the Board on a November 28, 1983
complaint by the Illinois Environmental Protection Agency
(Agency) against De Kalb-Pfizer Genetics (DPG) . DPG allegedly
committed open burning in violation of Sections 9(a) and 9(c) of
the Illinois Environmental Protection Act (Act) and former Rule
502(a), now recodified at 35 Ill. Adm. Code 237.102(a).

A hearing was held on March 8, 1985 at which time the
parties incorporated a properly signed copy of a Stipulation and
Proposal for Settlement into the record. By Board Order of April
18, 1985 the Stipulation was rejected because it contained no
admission of violation and lacked sufficient information for the
Board to determine whether a violation had occurred. A revised
Stipulation and Proposal for Settlement was filed on June 13,
1985.

DPG owns and operates a seed corn conditioning plant near
Illioopolis, Sangamon County, Illinois. The plant prepares
recently harvested "green" corn for distribution as seed corn.
This process generates waste materials including corn cobs,
husks, and dust (hereinafter the "conditioning wastes".) From
1966 to 1982, for approximately six to nine weeks of the harvest
season, DPG burned the conditioning wastes in the open at several
locations. DPG discontinued this practice after the Agency
notified it of its contention that the burning was a violation of
the Act. Presently the wastes are spread over and plowed under
the cropland where the crops were generated. (Stip. at 2-4).

The Agency and DPG disagree over the proper characterization
of the wastes. DPG maintains that the wastes are "agricultural

wastes" and therefore exempt from the prohibition against open burning. The Agency contends that the wastes are "trade wastes" for which no exemption exists.* The Stipulation provides that should the Board determine that DPG has committed the violations alleged that a penalty of \$2,000 is appropriate.

As construed by the Board in its order of April 18, 1985 in this matter, "agricultural waste" entitled to an exemption must be waste that is 1) generated on a farm; 2) as a result of the farm's crop production practices; and 3) be burned on that farm's premises. Previously, the only facts before the Board were that DPG owns and operates a seed corn conditioning plant which generates a waste of disputable nature. As revised, the stipulated statement of facts provides that "[t]he corn comes from farm land owned [by the principal partner in DPG, De Kalb Ag Research, Inc. ("De Kalb")] or from farm land farmed and owned by persons under contract to DPG." (Stip. at 2). It is further provided that De Kalb or DPG has conducted the burning "on farm land owned by De Kalb from which a portion of the corn was produced." (Stip. at 3).

Based on these facts, the Board finds that the waste attributable to crops produced under contract to DPG is not agricultural waste and consequently is not exempt from the prohibition against open burning. The wastes are clearly not generated on the same farm where the crops were sown but at the conditioning plant where the crops were transported to. As stated previously in this matter by the Board, "[w]aste which is the product of crops imported from outside farms [is] not exempt simply because the processing facility is also a farm." (Op. at 3).

As to the waste attributable to corn grown by De Kalb, not enough information exists in the record to determine its nature. The Board construes the term agricultural waste to apply to only those wastes actually generated on the premises of a farm. Although the parties have stipulated that the corn "comes

*"Agricultural wastes" are defined in relevant part as "any refuse, except garbage and dead animals, generated on a farm or ranch by crop and livestock production practices including such items as . . . crop residues but excluding landscape wastes." 35 Ill. Adm. Code 237.101. Under Section 237.120 these wastes are specifically exempt from the prohibition against open burning contained in Section 237.102.

"Trade Wastes" are not exempt from the prohibition against open burning and include "any refuse resulting from the prosecution of any trade, business, industry, commercial venture, utility or service activity, whether or not for profit. The term includes landscape waste but excludes agricultural waste." 35 Ill. Adm. Code 237.101.

from De Kalb's property", unaddressed is the salient issue whether the corn husks, sheller dust and cobs are generated on the same property as the corn. To be entitled to an exemption, the waste generator must establish that in preparing a crop for market, wastes or "crop residues" are created at the same location where the crops were sown. Although this information has not yet been provided, the Board finds that in this instance, the determination of the issue is unnecessary. This is because even if DPG were able to establish that the waste were produced at the same location as the crops and therefore constituted agricultural wastes, it would still fail on the issue of its entitlement to an exemption. The open burning of agricultural waste, although permitted, is still strictly regulated under 35 Ill. Adm. Code 237.120.* Of specific note is the requirement that it "be affirmatively demonstrated that no economically reasonable alternative method of disposal is available." 35 Ill. Adm. Code 237.120 (a)(6). DPG failed to make this affirmative demonstration and has, in fact, demonstrated that it does have a reasonable alternative disposal method, i.e., plowing the wastes under. (Stip. at 4).

Accordingly, the Board finds that the waste attributable to crops grown under contract as well as crops grown by De Kalb was burned in violation of the prohibition against open burning during the period 1966 to 1982. The Board finds that the stipulated penalty of \$2000.00 is a reasonable penalty.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all of the facts and circumstances in light of the specific criteria

*Section 237.120 exempts the open burning of agricultural waste "but only":

- 1) On the premises on which such waste is generated; and
- 2) In areas other than restricted areas; and
- 3) When atmospheric conditions will readily dissipate contaminants; and
- 4) If such burning does not create a visibility hazard on roadways, railroads tracks or air fields; and
- 5) More than 305 meters (1,000 feet) from residential or other populated areas; and
- 6) When it can be affirmatively demonstrated that no economically reasonable alternative method of disposal is available.

35 Ill. Adm. Code 237.120(a).

delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Respondent is hereby found to have violated Sections 9(a) and 9(c) of the Act and 35 Ill. Adm. Code 237.102(a). The Respondent is ordered to comply with the terms and the conditions of the proposed settlement agreement and to pay the stipulated penalty of Two Thousand Dollars (\$2000.00).

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the order of the Illinois Pollution Control Board that:

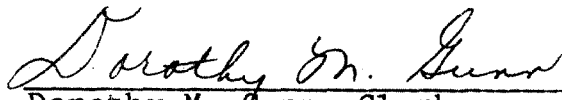
1. The Respondent, De Kalb-Pfizer Genetics, violated Sections 9(a) and 9(c) of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 237.102(a).
2. Within 40 days of the date of this Order the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of Two Thousand Dollars (\$2000.00) which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

3. The Respondent shall comply with all terms and conditions of the Stipulation and Proposal for Settlement filed on June 13, 1985, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of September, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board