ILLINOIS POLLUTION CONTROL BOARD
January 8, 1987

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant, v. GROWMARK, INC., a Delaware Corporation,	)	PCB 85-52

MR. JOSEPH F. MADONIA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. DANIEL J. LEIFEL, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on a three-count Complaint filed on April 19, 1985 by the Illinois Environmental Protection Agency (Agency). In Count I of the Complaint the Agency alleges that at no time from September 2, 1982 until April 19, 1985, had Growmark applied for or received a construction or operating permit as required by Section 212.461(d) for the emission sources and equipment at its facility in violation of 35 Ill. Adm. Code 201.143 and Sections 9(a) and 9(b) of the Illinois Environmental Protection Act (Act). In Count II the Agency alleges that from September 2, 1982 until April 19, 1985, particulate matter emissions which were caused or allowed during loading from Growmark's barge load-out spout at its grain processing facility were not captured by any air pollution control equipment in violation of 35 Ill. Adm. Code 212.462(d)(3)(A) and Section 9(a) and 9(b) of the Act. Finally, in Count III the Agency alleges that from September 2, 1982 until April 19, 1985, exhaust gas from the Growmark's rack dryers at its facility were not ducted through air pollution control equipment which has a rated and actual particulate removal efficiency of 90% by weight prior to release into the atmosphere in violation of 35 Ill. Adm. Code 212.462(b)(1)(B) and Sections 9(a) and 9(b) of the Act. Hearing was held on October 29, 1986 at which no members of the public were present (R. 2) and at which the parties entered a Stipulation and Proposal for Settlement which was filed with the Board on November 24, 1986.

Growmark is a Delaware corporation which is duly licensed and authorized to do business in the State of Illinois. At all pertinent times Growmark has operated a grain-handling and grain-drying operation which is located between the Illinois River and

the Illinois and Michigan Canal in Morris, Grundy County. Growmark's facility, which is located outside of a major population area in a mixed residential and industrial area, with the nearest residences at 1,000 feet to the north of the Growmark's site, includes two major dump pits and a barge load-out spout. (Stip. 1).

The Agency issued Growmark an operating permit (I.D. No. 063-060-AAS/M-100-OP) for the grain processing plant on March 18, 1976 pursuant to 35 Ill. Adm. Code 201.144. The Agency renewed Growmark's operating permit on June 12, 1979, for one year, and on June 2, 1980 for an additional five years. Before each permit was issued the Agency determined that Growmark's grain handling and processing facility met the exemption requirements of 35 Ill. Adm. Code 212.461(c). (Stip. 2). The initial 1976 operating permit for Growmark's facility was issued by the Agency based on an annual grain through-put (AGT) of 11,400,000 bushels. However, on September 2, 1982, the Agency determined that Growmark's AGT was 17,000,000 bushels, an increase of in excess of 30%. Growmark's own records for the applicable time period reflect a 3-year average AGT of 15,920,000 bushels, also an increase in excess of 30%. (Stip. 2).

Section 212.462(a) provides that an increase in AGT in excess of 30% of the AGT on which a facility's original construction and/or operating permit was granted shall be considered a "modification" of the facility's equipment and emission sources. Such a modification causes existing sources which were previously permitted under 35 Ill. Adm. Code 201.144 to become "new emission sources" as defined by 35 Ill. Adm. Code 201.102, thereby requiring the permittee to apply for a new construction and operating permit pursuant to 35 Ill. Adm. Code 201.143. The permittee must apply for such permits within 60 days after the Agency advises that there is a certified investigation on file indicating that there is an alleged violation against that facility's operation, pursuant to Section 212.461(d).

The Agency so notified Growmark on September 27, 1982. (Stip. 3). Thus, Growmark was required to apply for construction and operating permits for all sources and equipment at its Morris site, and to include a compliance plan and project completion schedule for complying with the applicable standards and limitations delineated in Sections 212.462 and 212.463. (Stip. 3-4). Growmark did not contest the Agency's 30% AGT increase determination, but contended that its current permit "grandfathered" in the application of Section 212.461(d) until the time that it expired.

The parties have characterized their disagreement as follows:

> Where a facility is issued an original operating permit in accordance with Section 201.144 pursuant to Section 212.461(c) and thereafter AGT increase in excess of 30% upon which the facility's original permit was issued occurs causing a "modification" of the facility, (1) is the facility's operator required to apply for a Section 201.143 construction/operating permit (including the submission of a compliance plan for the requirements of Sections 212.462 and/or 212.463) within sixty days of Agency notification of said modification, all as set forth in Section 212.461(d), and regardless of whether the modification occurs prior to the expiration date of the original permit (Agency position), or (2), may the facility's operator continue to operate the facility pursuant to its original permit (and exempted Section 212.462 or 212.463 or both standards and limitations) until such time as the original permit expires, and only thereafter be required to apply for a Section 201.143 permit and compliance program (Respondent position)? (Stip. 4-5)

Without agreeing on the resolution of this issue, Growmark developed a control system for the emissions from its grain handling facility. (Stip. 5). This control system, which involves the application of mineral oil to the grain as it is removed from the receiving dump pit, was determined by the Agency to be an equivalent control system under 35 Ill. Adm. Code 212.462(d)(2). Based upon this determination, Growmark was granted a permit pursuant to 35 Ill. Adm. Code 201.143 on August 12, 1985.

Therefore, the dispute between the parties for purposes of future compliance with the grain regulations is moot. However, for purposes of resolving this enforcement action, it is not. On the basis of the submitted stipulation, the Board finds that Growmark has violated 35 Ill. Adm. Code 212.461(d), 212.462(b)(1)(B) and 212.462(d)(3)(A) and Sections 9(a) and (b) of the Act. The Board concludes that Growmark's argument regarding the grandfathering of the Section 212.461(c) exemption during the term of the permit which was in existence at the time of the modification is without merit. The 60-day limitation for application for a permit pursuant to Section 212.461(d) would be rendered largely meaningless if Growmark's reasoning were accepted. Further, it makes little sense to delay the

application of a remedial rule for up to five years simply because the modification requiring further pollution control happens to take place shortly after a new permit has been issued.

The Agency has concluded that "no further actions by Respondent are deemed necessary in order to meet the permit and emission control requirements of the Board's air pollution control rules and the Illinois Environmental Protection Act". (Stip. 6), and the proposed settlement agreement simply provides that Growmark, Inc. pay a stipulated penalty of $7,500.00.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board will order the Respondent to pay the stipulated penalty of $7,500.00 into the Illinois Environmental Protection Trust Fund as agreed-upon by the parties.

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. Growmark, Inc. has violated 35 Ill. Adm. Code 203.143, 212.462(b)(1)(B), 212.462(d)(3)(A) and Sections 9(a) and 9(b) of the Illinois Environmental Protection Act.

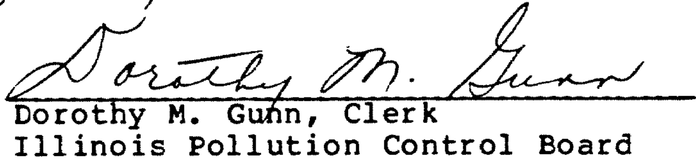
2. Within 30 days of the date of this Order, the Respondent, Growmark, Inc., shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of $7,500.00 which is to be sent to:

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

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on November 24, 1986, which is attached and 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 8th day of January, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
GRUNDY COUNTY

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant, -vs- GROWMARK, INC., a Delaware corporation, Respondent.	)	PCB 85-52

STIPULATION OF FACT AND PROPOSAL FOR SETTLEMENT

Complainant, the Illinois Environmental Protection Agency, by its attorney, Neil F. Hartigan, Attorney General of Illinois, and Respondent, Growmark, Inc., by its attorney, submit the following Stipulation of Fact and Proposed Settlement to the Pollution Control Board, pursuant to Procedural Rule 103.180:

Statement of Facts

1. Respondent Growmark, Inc., (formerly known as F.S. Services, Inc.) is a Delaware corporation licensed to do business in the State of Illinois, and at all times pertinent hereto has operated an existing grain-handling and grain-drying operation facility in Morris, Grundy County, Illinois (between the Illinois River and the Illinois and Michigan Canal).

2. At all times pertinent hereto Respondent's facility has been located outside of a major population area. The facility itself is located in a mixed residential/industrial area, with the nearest residences approximately one thousand (1000) feet to the north.

3. Included at Respondent's facility are two major dump pits and a barge load-out spout.

4. On or about March 18, 1976 the Agency issued to Respondent an operating permit for its facility pursuant to 35 Ill. Adm. Code §201.144 of the Illinois Pollution Control Board's Air Pollution Control Rules and Regulations ("Air Pollution Rules").

5. In issuing the aforesaid operating permit, the Agency determined that, in accordance with 35 Ill. Adm. Code §212.461(c) of the Air Pollution Rules, the Respondent's facility was exempted from the control requirements of 35 Ill. Adm. Code §§212.462 and 212.463. At that time Respondent's annual grain through-put (AGT) was 11,400,000 bushels.

6. Respondent's aforesaid operating permit was subsequently renewed by the Agency on or about June 12, 1979 for a one year period.

7. On or about June 2, 1980 the Agency again renewed Respondent's aforesaid operating permit, with an expiration date of May 28, 1985.

8. Prior to each renewal of Respondent's aforesaid operating permit the Agency determined that the Respondent's facility met the exemption requirements of 35 Ill. Adm. Code §212.461(c).

9. The permit for the Respondent's facility was issued on the basis of an AGT of 11,400,000 bushels. On September 2, 1982 the Agency determined the Respondent's facility AGT to be 17,000,000 bushels, an increase over the permit AGT of in excess of 30%. Respondent's records for the applicable period reflect a 3-year average AGT of 15,920,000 bushels, an increase of in excess of 30% over the permit AGT.

10. 35 Ill. Adm. Code §212.462(a) provides that an increase in AGT in excess of 30% of the AGT on which a facility's operation's original construction and/or operating permit was granted shall be considered a "modification" of the facility's equipment and emission sources. Such modification causes existing sources previously permitted under Section 201.144 to become "new emission sources" as defined by 35 Ill. Adm. Code §201.102, thereby requiring the permittee to apply for a new construction and operating permit pursuant to 35 Ill. Adm. Code §201.143 and install control equipment or demonstrate equivalent control. Moreover, once the Agency advises a permittee (previously exempted from the applicable control requirements by virtue of Section 212.461(c)) that there is a certified investigation on file with the Agency indicating that there is an alleged violation against the facility's operation, said permittee is required to apply for the Section 201.143 permit within sixty (60) days (see 35 Ill. Adm. Code §212.461(d)).

11. On or about September 27, 1982, the Agency, in accordance with Section 212.461(d), notified the Respondent that a certified investigation was on file with the Agency indicating that there was an alleged violation against Respondent's operation, i.e., an AGT increase in excess of 30% of the AGT upon which Respondent's original permit was based.

12. In line with its September 27, 1982 notification, the Agency informed Respondent that the 30% AGT increase triggered the repermitting provisions of Section 212.461(d), and that the duration of Respondent's current permit was not relevant. Accordingly, the Agency advised Respondent that the

latter was required within sixty (60) days after its receipt of said notification and pursuant to Section 212.461(d), to apply for a construction and operating permit issued under Section 201.143 for all sources and equipment at its facility, and which included a compliance plan and project completion schedule for complying with the standards and limitations of Section 212.462 or 212.463 or both.

13. In correspondence to the Agency dated January 12, 1983, Respondent did not contest the Agency's 30% AGT increase determination. Respondent, however, advised the Agency that it disagreed with the Agency's interpretation of the effect of the 30% AGT increase. Specifically, Respondent took the position that its current permit "grandfathered" the application of Section 212.461(d) until such time as that permit expired, i.e., that the Respondent was not legally required to apply for a Section 201.143 construction/operating permit and meet the control requirements of Sections 212.462 and/or 212.463 until such time as its current permit expired (May 28, 1985).

14. The dispute between the Agency and Respondent may be characterized as presenting a legal issue calling for the proper interpretation of the above referenced regulations upon a set of agreed upon facts: where a facility is issued an original operating permit in accordance with Section 201.144 pursuant to Section 212.461(c) and thereafter an AGT increase in excess of 30% upon which the facility's original permit was issued occurs causing a "modification" of the facility, (1) is the facility's operator required to apply for a Section 201.143 construction/operating permit (including the submission of a

compliance plan for the requirements of Sections 212.462 and/or 212.463) within sixty days of Agency notification of said modification, all as set forth in Section 212.461(d), and regardless of whether the modification occurs prior to the expiration date of the original permit (Agency position), or (2), may the facility's operator continue to operate the facility pursuant to its original permit (and exempted Section 212.462 or 212.463 or both standards and limitations) until such time as the original permit expires, and only thereafter be required to apply for a Section 201.143 permit and compliance program (Respondent position).

15. Before this dispute was resolved, Respondent developed a control system for the emissions from its facility that the Agency agreed met the requirements for grain handling and drying facilities under the Board's regulations. Respondent's system basically entails the application of mineral oil to the grain as it is removed from the receiving dump pit. (A more detailed description of Respondent's system is attached hereto as Exhibit A. IEPA determined such system to be an equivalent control system under 35 Ill. Adm. Code §212.462(b)(2). Based upon that system, on July 11, 1985, Respondent applied for a permit from the Agency in accordance with 35 Ill. Adm. Code §201.143, which the Agency issued on August 12, 1985; a copy of said permit is attached as Exhibit B. Accordingly, the dispute between the parties, for purposes of future compliance with the grain regulations, is moot. On or about November 1, 1985, Respondent transferred its interest in this facility to the Archer Daniels Midland Company.

16. At no time since September 2, 1982, (the date that the Agency determined a 30% AGT increase had occurred and hence the date a Section 201.143 permit was required) to and including July 11, 1985, did the Respondent apply for, nor did the Agency issue, a Section 201.143 construction and operating permit as required by Sectin 212.461(d) for the sources and equipment at Respondent's facility, nor did the Respondent install air pollution control equipment on its barge load-out spout in accordance with 35 Ill. Adm. Code §§212.462(d)(3)(A) and 212.462(b)(1)(B) respectively.

Proposal for Settlement

A. Given that Respondent's facility is now permitted, a proper equivalent control system has been installed (Exhibit B) and further that the facility has been sold to a third party, no further actions by Respondent are deemed necessary in order to meet the permit and emission control requirements of the Board's air pollution control rules and the Illinois Environmental Protection Act.

B. The Agency and Respondent agree that a monetary penalty in the amount of Seven Thousand Five Hundred Dollars ($7500.00) will aid in enforcement of the Act for the violations alleged in the Complaint; accordingly, Respondent agrees to and shall pay a civil penalty of $7500.00. Said penalty shall be paid within thirty (30) days of the order of the Board accepting this stipulation. Payment shall be made by certified check or money order payable to the Environmental Protection Trust Fund and delivered to:

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

C. The parties agree that the Statement of Facts set out above provides sufficient basis for the Board to find violations exist and to impose the agreed penalty.

D. This proposal is submitted to the Board for approval under Section 103.180 as one integral package, and the parties respectfully request the Board to enter its final order approving the entire settlement. All admissions and statements made herein are void before any Judicial or Administrative body if the foregoing settlement agreed to by the parties is not approved by the Board. If the Board should reject any portion thereof, the entire Settlement and Stipulation shall be terminated and be without legal effect, and the parties shall be restored to their prior position in this litigation as if no Settlement and Stipulation had been executed, without prejudice to any parties' position as to any issue or defense.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATE: 8/25/86 BY: Joseph E. Svoboda
Joseph Svoboda, Manager
Enforcement Programs

ILLINOIS ATTORNEY GENERAL

DATE: 8-27-86 BY: Robert Shuff Jr.
Robert V. Shuff, Jr.
First Assistant Attorney General

GROWMARK, Inc.

DATE: 7/31/86 BY: R. Gilfillan