

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
HARRY L. MASON and MELVYN H. MEENTS,)
as individuals, d/b/a MASON & MEENTS)
CONSTRUCTION COMPANY, and other)
unknown others,)
)
Respondents;) PCB 75-205
) PCB 76-75
) (CONSOLIDATED)
HARRY L. MASON and MELVYN H. MEENTS,)
d/b/a MASON & MEENTS CONSTRUCTION)
COMPANY,)
Petitioners,)
)
v.)
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

Messrs. Steven Watts and Russell R. Eggert, Assistant Attorneys
General, appeared for the Complainant;
Mr. Larry Lessen, Attorney, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

PCB 75-205, an Enforcement action, was commenced on May 16, 1975, when the Environmental Protection Agency (Agency) filed a Complaint against Respondents Harry L. Mason and Melvyn H. Meents, et al., (Mason & Meents). That Complaint alleged, in three Counts, that Mason & Meents had operated a continuous-mix asphalt concrete plant in violation of the particulate emission limitations of Rule 203(a) of Chapter 2: Air Pollution, of the Board's Rules and Regulations; had violated Rule 103(b)(7) of Chapter 2 by failing to comply with certain special conditions relating to stack testing in an operating permit issued by the Agency on April 6, 1973; had operated without a permit, in violation of Rule 103(b)(2) of Chapter 2, from Feb. 1, 1973 until the date the Complaint was filed; and had during the same period, violated the permit requirement of Section 9(b) of the Environmental Protection Act, Ill. Rev. Stat., Ch. 111-1/2, §1009(b) (1975). (The period from April 6, 1973 until August 6, 1973 was omitted from the alleged Rule 103(b)(2) violation; that period was covered by an operating permit issued April 6, 1973, whose special condition was alleged to have been violated.)

PCB 76-75, a Permit Appeal, was filed by Mason & Meents on March 17, 1976. The Petition in that case alleged that the Agency had wrongfully failed to issue Mason & Meents an operating permit for the equipment whose operation was the subject of the Enforcement matter, PCB 75-205.

Mason & Meents filed a Motion for Consolidation of these two cases on March 17, 1976. On March 25, 1975, the Board entered an Interim Order consolidating the two cases, that consolidation being conditioned upon receipt of a waiver of the statutory decision time in PCB 76-75. The required waiver was filed on April 9, 1976.

A hearing was held on May 26, 1976, in Watseka, Illinois. At that time the parties orally indicated their intent to file a signed Stipulation and Settlement Proposal (Stipulation) to resolve both of these cases. That Stipulation, filed with the Board on July 29, 1976, and a Joint Motion to Amend Stipulation and Settlement Proposal filed on August 11, 1976 form the basis for this Opinion and Order.

Mason & Meents own and operate an asphalt plant located approximately five miles east of Cullom, Illinois, in Ford County. The raw materials used at the Mason & Meents plant consist of stone, sand, mineral filler and asphalt, with resulting particulate emissions generally described as aggregate dust. (PCB 76-75, Pet., 2.) Since 1973 Mason & Meents have apparently (see Agency permit record, filed April 28, 1976) conducted several stack sampling procedures which the Agency found inadequate. The crux of the parties' differences on this issue seems to have been the number of consecutive days' sampling to be submitted. (See, id., and PCB 76-75, Pet., 4.)

Under the Proposed Settlement in this case, Mason & Meents admits it violated the special condition concerning sampling in the April 6, 1973 permit described above. Respondent further admits that, except for the period covered by that permit, it has operated its emission source without an operating permit in violation of §9(b) of the Environmental Protection Act (Act) and Rule 103(b)(2) of Chapter 2. Ill. Rev. Stat., Ch. 111-1/2, §1009(b) (1975); PCB Regs., Ch. 2: Rule 103(b)(2) (1972). By way of settlement, Mason & Meents agrees that it will perform the stack testing requested by the Agency no later than September 17, 1976.

If that stack sampling indicates that Mason & Meents is operating in conformance with Rule 203(a) of Chapter 2, Mason & Meents further agrees to submit an appropriate operating permit application, and the Agency agrees that the permit will be issued. If the agreed upon sampling does not indicate compliance with Rule 203(a), Mason & Meents agrees to apply to the Agency for a construction permit to install control equipment which will enable compliance with Rule 203(a) by June 1, 1977; the Agency agrees to issue that permit, if necessary.

With regard to Mason & Meents' admitted violations, a civil penalty of \$1,250 has been agreed to. In addition, Mason & Meents has agreed to dismiss the Permit Appeal, PCB 76-75.

Although no mention is made in the Stipulation of the alleged particulate emission limitations violation of Rule 203(a), we nonetheless find the Stipulation here acceptable. It is apparent that the parties feel that stack testing will disclose that Mason & Meents' operations are within the limitations of Rule 203. Even if those operations are not within the Rule 203(a) limits, the Stipulation provides for compliance within less than one year. Since Mason & Meents may now be in compliance, and since Mason & Meents alleged in the PCB 76-75 Petition (p.4) that its plant has operated an average of only 20 days per year over the last three years, it seems unlikely that there will be any adverse environmental impact from our approval of this Settlement.

Pursuant to the Stipulation, we shall dismiss PCB 76-75. As a result of the parties' failure to address the issue, we shall dismiss Count I of PCB 75-205 (alleging violation of Rule 203(a)), without prejudice.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondents Harry L. Mason and Melvyn H. Meents, doing business as Mason & Meents Construction Company, are found to have operated an asphalt plant in Ford County, Illinois, in violation of Section 9(b) of the Environmental Protection Act and Rules 103(b) (2) and 103(b) (7) of Chapter 2: Air Pollution, of the Board's Rules and Regulations.

2. Respondents shall pay as a penalty for the above violations the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00), payment to be made within thirty (30) days of the date of this Order, by certified check or money order to the following:

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

3. The Stipulation and Settlement Proposal submitted by the parties to this matter, as amended, is hereby approved and incorporated as part of this Order. The parties shall comply with all terms thereof in a timely manner.

4. Case PCB 76-75 is dismissed without prejudice.

5. Count I of the Complaint in PCB 75-205, alleging violation of Rule 203(a) of Chapter 2: Air Pollution, is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of September 1976, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board