

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1993

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 93-116
)	(Enforcement)
H.P. SMITH, INCORPORATED,)	
an Illinois Corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This matter comes before the Board upon a complaint filed June 17, 1993 on behalf of the People of the State of Illinois ("People"), by and through its attorney, Roland W. Burris, Attorney General of the State of Illinois, against H.P. Smith, Incorporated, an Illinois Corporation located in Bedford Park, Cook County, Illinois. The complaint alleges that H.P. Smith, Incorporated has violated Section 9(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(b).

Pursuant to 415 ILCS 5/31(a)(1), a joint Motion requesting relief from the Act's hearing requirement was filed by the parties on June 17, 1993. Notice of the waiver was published by the Board on July 8, 1993; no objection to grant of the waiver was received. Waiver of hearing is hereby granted.

A Stipulation and Settlement Agreement was filed by the parties on June 17, 1993. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. H.P. Smith, Incorporated neither admits nor denies the alleged violations. H.P. Smith, Incorporated agrees to pay a civil penalty of Twenty-Seven Thousand Dollars (\$27,000.00).

The Board has authority to impose a penalty where the parties have stipulated to a penalty, but not to a finding of violation. See, Chemetco, Inc. v. Illinois Pollution Control Board, 140 Ill. App.3d ,283, 488 N.E.2d 639, 643 (5th Dist. 1986); and Archer Daniels Midland v. Pollution Control Board, 140 Ill.App.3d 823, 489 N.E.2d 887 (3rd Dist. 1986).

The Board finds the Settlement Agreement acceptable under 35 Ill. Adm. Code 103.180. This Settlement Agreement in no way affects respondent's responsibility to comply with any federal,

state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

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

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and H.P. Smith, Incorporated, concerning its operations located in Bedford Park, Cook County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) The H.P. Smith, Incorporated shall pay the sum of Twenty-Seven Thousand Dollars (\$27,000.00) within 30 days of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

H.P. Smith, Incorporated shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

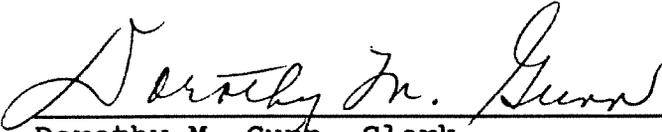
- 3) H.P. Smith, Incorporated shall cease and desist from the alleged violations.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 5th day of August, 1993, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board