

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1990

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 90-160
) (Enforcement)
JOHN BOOS & COMPANY,)
)
Respondent.)

MICHAEL K. FRANKLIN APPEARED FOR COMPLAINANT.

ANTHONY SIEMER APPEARED FOR RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter comes before the Board upon a two count complaint filed August 9, 1990, on behalf of the People of the State of Illinois ("People"), by and through its attorney, Neil F. Hartigan, Attorney General of the State of Illinois, against John Boos & Company ("John Boos"), located in Effingham, Effingham County, Illinois. The complaint alleges that John Boos has violated Sections 9(a) and (b) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, pars. 1001, et seq., and 35 Ill. Adm. Code 201.141, 201.143, and 212.204 of the Board's rules and regulations.

Hearing on this matter was held October 17, 1990, in Effingham, Effingham County, Illinois. At that hearing several members of the public, who live in the area of the plant, were present to express their concerns regarding this settlement. Specifically, they expressed their concern with the amount of blowing sawdust in the air. They stated that this results in health difficulties and leaves a residue of sawdust on cars and furniture. (See Tr. 14 through 42).

The parties submitted a Stipulation and Settlement Agreement, executed by the parties, within 15 days of the hearing. John Boos does not admit the alleged violations. John Boos agrees to pay a civil penalty of ten thousand dollars (\$10,000).

The complaint, which this settlement is based upon, alleges violations of the Act and the Board's rules with regards to emissions from the boiler at the facility. The members of the public agreed that the emission of sawdust particulates was not necessarily from the boiler, but from other potential emissions

sources. (Tr. 25 and 27). Therefore, the present complaint and settlement before the Board does not appear to be the proper arena to address the public's concern. That concern is better addressed in a subsequent complaint. The Board notes that the Office of the Attorney General indicated, in a letter it filed with the executed agreement in this case, that the Illinois Environmental Protection Agency ("Agency") was investigating the concerns expressed by the public at hearing.

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.

Finally, in accepting this Stipulation, the Board makes no finding concerning the sawdust complaints made at hearing. The Board encourages the Agency to promptly investigate these complaints.

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 John Boos & Company, concerning John Boos's operations located in Effingham, Effingham County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2.) John Boos shall pay the sum of ten thousand dollars (\$10,000) 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

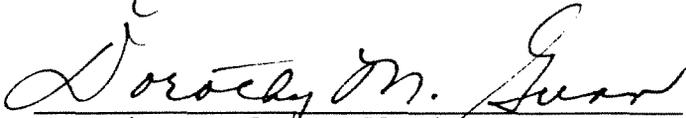
John Boos shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

J.D. Dumelle and 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 29th day of November, 1990, by a vote of 5-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board