

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1992

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY and)	
THE PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainants,)	
)	
v)	PCB 86-160
)	(Enforcement).
)	
FITZ-MAR, INC.)	
)	
Respondent.)	

MICHAEL K. FRANKLIN AND BARBARA KLEIN APPEARED ON BEHALF OF
COMPLAINANTS, AND

JOHN F. FENNIG AND THOMAS J. MURPHY APPEARED ON BEHALF OF
RESPONDENT.

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

This matter comes before the Board upon a complaint filed September 30, 1986, on behalf of the Illinois Environmental Protection Agency ("Agency") and the People of the State of Illinois ("People"), by and through their attorneys, the State's Attorney of Cook County and the Attorney General of the State of Illinois, against Fitz-Mar, Inc. ("Fitz-Mar"), located in the City of Chicago Heights, Cook County, Illinois. The complaint alleges that Fitz-Mar has violated Sections 9(a), 12(a), 12(f), and 21(d)(2) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111½, pars. 1001, et seq., and 35 Ill. Adm. Code 807.202(b)(1), 807.301, 807.302, 807.304, 807.313, 807.314(e) of the Board's rules and regulations.

On October 20, 1986, the Hearing Officer in this matter filed a hearing officer scheduling order scheduling hearing for December 16, 1986. On November 5, 1986, the Hearing Officer entered another scheduling order continuing the December 16, 1986 hearing to January 21, 1987. On December 19, 1986, the Board received a hearing officer order cancelling the January 21, 1987 hearing and continuing the case. On May 26, 1987, Fitz-Mar filed a motion to dismiss with the Board. The Agency and the People filed their response to the motion on June 10, 1987. On July 13, 1987, the Board entered an order denying Fitz Mar's motion to dismiss. On August 17, September 17, and October 23, 1987, the Hearing Officer issued three orders continuing the case and scheduling additional status conferences. On July 25, 1988, the Hearing Officer continued this matter indefinitely pending the

issuance of an Appellate Court decision in related litigation in the First District Appellate Court. On June 21, September 6, October 12, November 20, and December 11, 1990, the Hearing Officer filed hearing officer orders with the Board which detailed the results of several status conferences and scheduled of additional status conferences. Finally, On April 19, 1991, the Hearing Officer issued a scheduling order scheduling hearing for June 28, 1991.

At that hearing, the parties stated on the record that they had reached a settlement agreement, but were awaiting signatures and final approval of the agreement. Because the parties anticipated submission of the fully executed agreement within two to four weeks of the hearing, the Hearing Officer stated that the parties should submit the agreement on or before August 12, 1991. Because the parties did not submit the agreement by August 12, 1991, the Board issued an order on September 12, 1991, stating that it would set the matter for hearing if the parties did not file the executed stipulation and proposal for settlement on or before September 24, 1991. On October 10, 1991, in response to the State's Attorney's request for additional time in which to submit the executed stipulation and proposal for settlement, the Board issued a second order directing the Hearing Officer to set the matter for hearing on the merits by November 11, 1991, and to conclude all such hearings no later than December 15, 1991.

A second hearing on this matter was held December 12, 1991, in Chicago, Illinois. At the hearing, the parties submitted an amended Stipulation and Settlement Agreement, executed by the parties. Fitz-Mar denies the alleged violations. Fitz-Mar agrees to pay a civil penalty of ten thousand dollars (\$10,000.00). At the hearing, the Hearing Officer also asked the parties to provide the Board with an explanation for the delay in this case. (R. 28-29). In response, the attorneys representing the Agency and the People explained that more time was needed to obtain the necessary approval as well as a consensus on the agreement itself in light of the fact that both the Attorney General's Office and the States Attorney's Office acted as co-counsel in representing two complainants. (R. 30). The attorneys also mentioned several issues surrounding the case, such as the Appellate court case, that may have caused the delay. (R. 30-31, 32-34)

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 Illinois Environmental Protection Agency and the People of the State of Illinois and Fitz-Mar, Inc., concerning Fitz-Mar's operations located in The City of Chicago Heights, Cook County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
2. Fitz-Mar, Inc. shall pay the sum of ten thousand dollars (\$10,000.00) 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

Fitz-Mar, Inc. 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, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), as now or hereafter amended, from the date of 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.

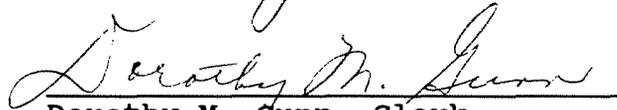
3. Fitz-Mar shall cease and desist from the alleged violations.

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.

Board Member 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 6th day of February, 1992, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board