

ILLINOIS POLLUTION CONTROL BOARD  
May 9, 1991

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 90-111  
 ) (Enforcement)  
 )  
SEEGERS GRAIN, INC. )  
 )  
Respondent. )

JOSEPH ANNUNIZO APPEARED ON BEHALF OF THE COMPLAINANT.

JAMES WRIGHT APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed June 14 1990 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 Seegers Grain, Inc. (Seegers) located Freeport, Stephenson County, Illinois. The complaint alleges that Seegers has violated Sections 9(a) and (b) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111½, pars. 1001, et. seq., and 35 Ill. Adm. Code 201.142 and 201.143 of the Board's rules and regulations.

Hearing on this matter was held September 14, 1990 in Freeport, Stephenson County, Illinois. At hearing, the parties submitted a Stipulation and Settlement Agreement, which had not been executed by the parties. The Stipulation sets forth facts pertaining to the nature, operations, and circumstances surrounding the claimed violations. Seegers admits to past violations of Sections 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.142 and 201.143 and agrees to pay a civil penalty of two thousand dollars (\$2,000). Seegers further agrees to cease and desist from the alleged violations.

On November 29, 1990, the Board directed the Hearing Officer to set this matter for hearing on the merits, and to complete all such hearings as expeditiously as possible but no later than 180 days from that date. The Board took such action after the parties failed to respond to a November 8, 1990, Board Order which directed the parties to file a signed and executed stipulation with the Board no later than November 26, 1990. A hearing was set for February 11, 1991; however, that hearing was cancelled by the Board due to budget constraints. No additional hearings have been set. On May 2, 1991, the parties filed a

signed and executed stipulation. The stipulation did not materially differ from the unexecuted stipulation filed at hearing. Therefore, the Board finds that an additional hearing is not warranted in this case and directs the Hearing Officer to cancel any such hearings which may be set.

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 Seegers Grain, Inc. concerning Seegers's operations located in Freeport, Stephenson County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2.) Seegers shall pay the sum of two thousand dollars (\$2,000) 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

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

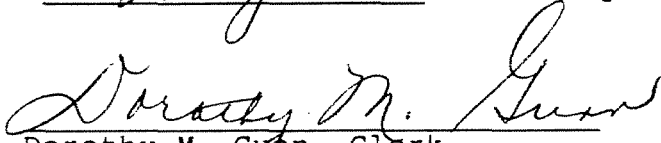
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

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.

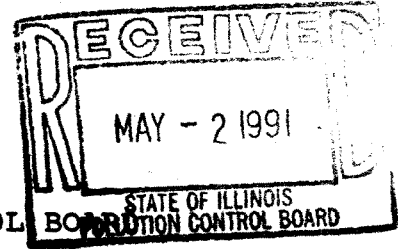
IT IS SO ORDERED.

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 9<sup>th</sup> day of May, 1991, by a vote of 5-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

STATE OF ILLINOIS )  
 )  
COUNTY OF STEPHENSON )



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 90-111  
 )  
SEEGERS GRAIN, INC., a Delaware )  
Corporation, )  
 )  
Respondent. )

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by their attorney, ROLAND W. BURRIS, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, Seegers Grain, Inc., by its attorney, Mr. James L. Wright of the law firm of Militello, Janck & Coen, P.C., do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. The agreement shall be null and void unless the Illinois Pollution Control Board (hereinafter "Board"), approves and disposes of this matter

on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act, Ill.Rev.Stat., (1989), ch. 111-1/2, pars. 1001 et seq.

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal For Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal For Settlement shall apply to and be binding upon the Complainant and Respondent, as well as the successors and assignees of each and any officer, director, agent, employee or servant of Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Settlement the failure of its agents, servants or employees to take such action as shall be required to comply with the provisions of this Settlement.

#### IV.

#### STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency, (hereinafter "Agency") is an administrative agency established in the executive branch of the State government by Section 4 of the Illinois Environmental Protection Act (hereinafter "the Act"), Ill.Rev.Stat., (1989), ch. 111-1/2, par. 1004 and charged inter alia, with the duty of enforcing the Act.

2. Respondent, Seegers Grain, Inc. (hereinafter "Seegers"), is a Delaware corporation with its principal place of business located in Illinois. At all times relevant to this Complaint, Seegers has owned and operated a facility located at 300 South Hancock, Freeport, Stephenson County, Illinois. Respondent is in the business of handling, drying and storing grain.

3. Within its facility, Seegers constructed grain elevators including a dump pit cyclone and internal grain transfer apparatus.

4. Section 201.102 of the Pollution Control Board's Air Pollution Rules, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Air Pollution Control Equipment": any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

"Specified Air Contaminant": any air contaminant as to which this Subtitle [B] contains emission standards or other specific limitations.

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

5. The grain elevator equipment, which was constructed after April 14, 1972, emits or is capable of emitting particulate matter, a specified air contaminant, into the atmosphere and is, therefore, a new emission source as that term is defined in 35 Ill. Adm. Code 201.102, set forth above. In addition, the dump pit with cyclone and internal transfer apparatus are air pollution control equipment as that term is defined in 35 Ill. Adm. Code 201.102 set forth above.

6. Sections 9(a) and (b) of the Illinois Environmental Protection Act, Ill.Rev.Stat., (1989), ch. 111 1/2, par. 1009(a) and (b), provide as follows:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;
- b. Construct, install, or operate any equipment, facility, vehicle, vessel, or

aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

7. Sections 201.142 and 201.143 of the Pollution Control Board's Air Pollution regulations, 35 Ill. Adm. Code 201.142, 201.143, provide as follows:

Section 201.142            Construction Permit  
                                 Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

Section 201.143            Operating Permits for New  
                                 Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except by such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by Section 201.157) as shall be specified by the construction permit.

8. The equipment listed herein, in order to be built, must have a construction permit issued by the Agency because each is an emission source.



9. In June, 1988, Seegers began construction of a grain elevator without the required Agency construction permits.

10. The equipment listed herein was installed or constructed after April 14, 1972, and each is, therefore, a new emission source.

11. The equipment listed herein must have an Agency operating permit because it consists of new emission sources and air pollution control equipment. It is not exempt pursuant to 35 Ill. Adm. Code 201.146.

12. Construction of the facility began in June, 1988; a construction permit was issued on November 10, 1988. Operation of the facility began in October, 1988; an operating permit was issued on March 15, 1990. During these periods of time, Seegers Grain, Inc., constructed and operated the equipment listed herein without the required Agency construction and operating permits in violation of Section 9(a) and (b) of the Act, Ill. Rev. Stat., (1989) ch. 111-1/2, par. 1009(a) and (b) and Sections 201.142 and 201.143 of the Board Air Pollution Rules, 35 Ill. Adm. Code 201.142 and 201.143.

#### V.

#### NATURE OF RESPONDENT'S OPERATIONS AND CONTROL EQUIPMENT

Seegers Grain, Inc., is engaged in the grain storage business. Its facility in Freeport, Illinois can store approximately 500,000 bushels of grain. The air pollution control

equipment within this facility consists of a MAC 96-MCF-153 dust filtration system and a mineral oil dust suppression system.

#### VI.

#### RESPONDENT'S EXPLANATION FOR PAST FAILURES TO COMPLY WITH THE ACT

The permit violations were inadvertent. When the construction process commenced, Seegers Grain, Inc., was unaware of the Act's permit requirements and was acting under a good faith belief, even if erroneous, that a permit was not required.

Although Seegers was unaware of the technical permit requirements, Seegers at all times was sensitive to the underlying environmental concerns. Seegers elected not to install a particulate system because of its belief that this system was not as effective as a baghouse system, even though the other system satisfied state specifications and was only half as expensive as the system which was installed (\$25,000.00 vs. \$50,000.00).

#### VII.

#### FUTURE PLANS OF COMPLIANCE

Respondent, Seegers, shall diligently conform to the Board's permit regulations and shall cease and desist from further violations of the Act and the regulations promulgated thereunder.

#### VIII.

#### IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Illinois Environmental Protection Act, Ill.Rev.Stat., (1989), ch. 111-1/2, par. 1033(c), provides:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people;
2. The social and economic value of the pollution source;
3. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source;
5. Any economic benefits accrued by a non-complying pollution source because of its delay in compliance with pollution control requirements; and
6. Any subsequent compliance.

In response to these factors the parties state as follows:

A. Impact to the public resulting from Seegers' non-compliance was that the Agency and the public were not privy to information that is important to the control of air pollution in the State of Illinois. The permit process is the only method available for the State to identify possible air pollution sources and their control.

B. The parties agree that Seegers' facility are of social and economic benefit.

C. Seegers' noncompliance with pollution control requirements was economically beneficial in that it utilized its unpermitted equipment from at least October, 1988, until March 15, 1990, without the delay of applying and waiting for the Agency to issue a permit.

D. Seegers did subsequently comply with air pollution control requirements by obtaining the necessary operating permit.

## IX

### DETERMINATION OF PENALTY

Section 42(h) of the Act, Ill.Rev.Stat., (1989), ch. 111-1/2, par. 1042(h) provides:

In determining the appropriate civil penalty to be imposed under ... this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further

violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The duration of the violation was 18 months. A permit violation, only, was at issue. No substantive violations of the Act or Board regulations were found.
2. Seegers responded promptly to the Agency's CIL. There was some delay in obtaining the Respondent's permit because Respondent's first application was rejected. Seegers did proceed with due diligence in obtaining the necessary permit.
3. Seegers did accrue some economic benefit by avoiding the payment of annual permit fees for 18 months.
4. Complainant has determined, in this instance, that a two thousand dollar (\$2,000.00) penalty will serve to deter further violations and aid in future voluntary enforcement of the Act and Board regulations.
5. On December 9, 1988, a complaint, which became PCB 88-199, was filed against the Seeger Grain facility located in Crystal Lake, Illinois. The complaint alleged violations of noise regulations at the facility. A Stipulation and Proposed Settlement was accepted by the PCB on June 3, 1990.

X.

TERMS OF SETTLEMENT

A. Respondent, Seegers, admits to the past violations of Sections 9(a) and (b) of the Act, Ill.Rev.Stat., (1989), ch. 111-1/2, par. 1009(a) and (b) and 35 Ill. Adm. Code 201.142/201.143.

B. Respondent, Seegers, agrees to pay a penalty of Two Thousand Dollars (\$2,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal For Settlement. 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

Seegers' Federal Employers Identification Number, 36-288-2430, shall be written upon the certified check or money order.

C. Respondent, Seegers, shall cease and desist from further violations of the Act and regulations promulgated thereunder.

**XI.**

**COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

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 Illinois Environmental Protection Act, Ill.Rev.Stat., (1989), ch. 111-1/2, par. 1001 et seq., and the Illinois Pollution Control Board's Air Pollution Control regulations.

**XII**

**RIGHT OF ENTRY**

In addition to any other authority, the Agency, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have right of entry to Seegers's facility at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of Seegers's facility, the Agency, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples as they deem necessary in order to conduct their inspection.

**XIII.**

**RELEASE FROM LIABILITY**

In consideration of Respondent's payment of a \$2,000.00 penalty and commitment to refrain from further violations of the Act, the Agency releases, waives and discharges Respondent from any further liability or penalties from violations of the Act

which were the subject matter of the complaint herein. However, nothing in this Settlement Agreement shall be construed as a waiver by complainant of the right to redress future violations or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

FOR THE RESPONDENT

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

SEEGERS GRAIN, INC.,  
a Delaware Corporation

By: Joseph E. Svoboda

By: Robert Seeger Pru

JOSEPH E. SVOBODA  
General Counsel

Dated: 3/4/91

Dated: 4-22-91

ROLAND W. BURRIS  
Attorney General  
State of Illinois

By: Matthew J. Dunn

MATTHEW J. DUNN, Chief  
Environmental Control Division  
Assistant Attorney General

Dated: 5/1/91

jjast001