

ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 88-201
)
CITY OF MARION, a municipal)
corporation, and MARION PEPSI)
COLA BOTTLING COMPANY, INC.,)
a Missouri corporation,)
)
Respondents.)

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

On December 14, 1988, the Illinois Environmental Protection Agency (Agency) and the City of Marion (Marion) and the Marion Pepsi Cola Bottling Company (Company) filed a Stipulation and Proposal for Settlement (Stipulation).

On May 11, 1989, the Board issued an Interim Order directing the parties to explain certain aspects of the Stipulation, namely:

1. The intention of the parties regarding the effect of the clause providing that the Board is to "retain jurisdiction" for certain purposes;
2. The enforceability of the provision allowing the Board to "extend the time for performance" of obligations under the Stipulation;
3. The statutory and factual justification for the provision in the Stipulation that \$3,000 of the total \$14,000 penalty is to be deposited into the Hazardous Waste Fund; and
4. Clarification of the provision that the penalty checks be delivered to the Environmental Control Division of the Office of the Attorney General, rather than to the Agency.

Responses to the Board's Interim Order were timely filed by all three parties. The responses are in general accord on all of the aspects under scrutiny.

As to the provisions for the Board to "retain jurisdiction" and to "extend the time for performance", the parties advise the

Board that, performance having already been achieved in a timely manner "retention of jurisdiction by the Board is not necessary" (Agency Resp., p. 1).

As to payment of the \$3,000 penalty into the Hazardous Waste Fund, the Attorney General, on behalf of the Agency, states that this "reflects the costs of a removal/remedial action incurred by the Agency which the Board may order paid into the Hazardous Waste Fund pursuant to Section 22.2(f) and (i) of the Act" (Agency Resp., pp. 1-2). The other parties do not object to this characterization, or to the disposition of the funds accordingly (City of Marion Resp.).

With respect to the delivery of checks to the Attorney General's Office rather than to the Agency, the Attorney General, on behalf of the Agency, specifies that this requirement of the Stipulation was inserted "to allow the Attorney General to respond more quickly to failure to make penalty payments by the required date by eliminating the need for IEPA to inform the Attorney General that a payment had not been received", rather than to "usurp the IEPA's authority as coordinator for handling receipts for the Environmental Protection Trust Fund" (Agency Resp., p. 2).

The Board is satisfied that the Stipulation, as clarified, is an acceptable basis for resolution of this matter. However, insofar as the responses indicate that all obligations under the Stipulation, including payment of penalties and reimbursement of costs, have already been performed, those aspects of the Stipulation relating to continuing Board oversight appear to be unnecessary; further, the deposit into the Hazardous Waste Fund should be correctly referred to as a reimbursement, rather than a penalty. The Board accordingly construes the responses to its Interim Order of May 11, 1989, as a joint revision to the Stipulation. This revision consists of deletion of item 3 of Article VII (which item provides that the parties may under certain circumstances request the Board to extend the time for performance), deletion of all of Article IX (Retention of Jurisdiction), and reclassification of the deposit into the Hazardous Waste Fund as reimbursement for costs, not as a penalty).

The Board finds the Stipulation, as thus revised, acceptable under 35 Ill. Adm. Code 103.180.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

- 1) The Board hereby accepts the Stipulation and Proposal for Settlement executed by the City of Marion, the Marion Pepsi Cola Bottling Company and the Illinois Environmental Protection Agency, filed with the Board on December 14, 1988, and revised by the parties in their responses to the Board's Interim Order of May 11, 1989. The Stipulation and Proposal for Settlement, except for deletion of item 2 of Article VII, deletion of all of Article IX, and reclassification of the deposit into the Hazardous Waste Fund to reimbursement for costs rather than as payment of a penalty is incorporated by reference as though set forth herein.

- 2) Marion Pepsi Cola Bottling Company shall pay a civil penalty of eleven thousand dollars (\$11,000) for its violations of the Illinois Environmental Protection Act and the applicable regulations. Marion shall pay a penalty of one thousand dollars (\$1,000.00) for its violations of the Illinois Environmental Protection Act and applicable regulations. Each penalty shall be paid within ninety (90) days of the date of entry of this order by certified check made payable to the Environmental Protection Trust Fund. In addition, Marion Pepsi Cola Bottling Company shall pay three thousand dollars (\$3,000) as reimbursement for costs incurred by the State of Illinois for removal/remedial action as a result of a release or substantial threat of release of hazardous substance. Payment shall be made within ninety (90) days of the date of entry of this order by certified check made payable to the Hazardous Waste Fund. Each check shall be delivered to:

Environmental Control Division
Office of the Attorney General
500 South Second Street
Springfield, IL 62706

Attn.: James L. Morgan
Assistant Attorney General

- 3) This docket is hereby closed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 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. T. 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 13th day of July, 1989, by a vote of 6-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board