

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 90-84  
 ) (Enforcement)  
 WE-TOAST BREAD )  
 COMPANY, INC., )  
 )  
 Respondent. )

PAMELA CIARROCCHI, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

ROBERT MELTZER, ROBERT MELTZER & ASSOCIATES, APPEARED ON BEHALF OF RESPONDENT.

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a complaint filed April 26, 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 We-Toast Bread Company (We-Toast). The We-Toast facility at issue in this case is located at 1038 South Kolmar, Chicago, Illinois. The complaint alleges that We-Toast has violated Section 9(b) of the Environmental Protection Act (Act), Ill.Rev.Stat. 1987, ch. 111 1/2, par. 1009(b), and 35 Ill. Adm. Code 201.144. Those sections prohibit any person from operating existing emission sources and air pollution control equipment without an operating permit from the Illinois Environmental Protection Agency (Agency).

Hearing on this matter was held June 13, 1990, in Chicago, Illinois. At hearing, the parties submitted a stipulation and settlement agreement. According to the stipulation, We-Toast processes bakery waste for animal and poultry food at its Kolmar Avenue facility. The facility operates 8 air emission sources and 3 pieces of air pollution control equipment, and operated those sources and equipment without permits from at least 1972 until April 6, 1990, when the Agency issued an operating permit. We-Toast admits to past violations of Section 9(b) of the Act and 35 Ill. Adm. Code 201.144, and agrees to pay a penalty of \$3,000.

After reviewing the record in this case, the Board requires additional information. The record shows that We-Toast operated 11 pieces of unpermitted equipment for a period of 18 years, and is now willing to pay a \$3,000 penalty. Pursuant to Section 42(a)

of the Act, as it existed at the time of these violations, any person who violates the Act or Board regulations is liable for a civil penalty of up to \$10,000 per violation and up to \$1,000 per day for continuing violations.<sup>1</sup> A mathematical calculation shows that We-Toast is liable for up to more 72 million dollars in penalties, excluding interest, yet the stipulation provides for only \$3,000--roughly \$167 per year for operating 11 pieces of unpermitted equipment. The Board has both the power and the duty to exercise independent discretion over settlement agreements, and is obligated to ensure that all penalties will aid in the enforcement of the Act. Illinois Environmental Protection Agency v. Archer Daniels Midland, 68 PCB 501, 503 (PCB 80-151, March 27, 1986), modified, Archer Daniels Midland v. Pollution Control Board, 149 Ill.App.3d 301, 500 N.E.2d 580, 102 Ill.Dec. 687 (4th Dist. 1986). Although the penalty seems low in this case, the Board notes that the record does not contain any information on the existence of any mitigating circumstances, including We-Toast's ability to pay. See Illinois Environmental Protection Agency v. Arnold's Sewer and Septic Service, 63 PCB 43, 46 (PCB 83-23, February 20, 1985). Therefore, the Board directs the parties to file additional explanation in support of the stipulation. This explanation shall be received by the Board on or before October 15, 1990.

Finally, the Board notes that although the complaint in this case asks the Board to order We-Toast to pay all costs, including reasonable attorneys', expert witness' and consultants' fees, expended by the People in pursuit of this action, the stipulation is completely silent on this issue. The People shall address this omission in its filing, due October 15, 1990.

IT IS SO ORDERED.

J. D. Dumelle and J. Marlin concurred; J. Anderson and R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 30<sup>th</sup> day of August, 1990, by a vote of 5-2.

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

<sup>1</sup> The Board notes that the penalties were raised to \$50,000 per violation and \$10,000 per day, effective July 1, 1990.