

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-61
)
MISSOURI PORTLAND)
CEMENT COMPANY,)
)
Respondent.)

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

This matter comes before the Board on a November 3, 1983 complaint filed by the Illinois Environmental Protection Agency (Agency) against the Missouri Portland Cement Company (Missouri Portland). The complaint alleges that Missouri Portland caused the emission of particulate matter into the atmosphere in violation of Sections 9(a) and 9.1(f) of the Illinois Environmental Protection Act (Act) and former Air Pollution Rules 203(b), 203(d)(2)(B), 904, 105(a) and 105(d), now recodified at 35 Ill. Adm. Code 212.322, Illustration C; 212.422; 230.160; 201.149; and 201.263 respectively.

A hearing was held on January 11, 1985 at which time the parties stated their intention to enter into a settlement agreement. The Stipulation and Proposal for Settlement was submitted on June 19, 1985 but was rejected by the Board (4-3) since the one violation admitted to was statutorily insufficient to support the stipulated \$20,000 penalty.

In response, the parties filed a revised Stipulation and Proposal for Settlement on August 15, 1985. As set forth by the revised stipulation, Missouri Portland owns and operates a portland cement manufacturing plant near Joppa, Massac County, Illinois. The plant uses two dry processing rotary kilns (Kiln No. 1 and Kiln No. 2). The kiln in question, Kiln No. 1, is controlled by water sprays, a dust curtain, two simple cyclones in parallel, a dust chamber, and two electrostatic precipitators. Clinker generated by Kiln No. 1 is sent to Clinker Cooler No. 2 for cooling. This clinker cooler is controlled by a baghouse or a gravel bed filter. (Stip. at 2-3).

The violations alleged concern various dates upon which Agency inspectors observed that Kiln No. 1 was in operation while one or both of its electrostatic precipitators were malfunctioning. This is alleged to have caused the emission of particulate matter into the atmosphere in excess of the allowable

hourly emission rate as set forth in 35 Ill. Adm. Code 212.322 (51.20 lbs/hr per 100 tons/hr process weight rate). Agency calculations, based on stack tests conducted in 1975 and 1981, estimate that during periods of malfunction emission rates could range from 102.6 lbs/hr (using the 1975 data) to 267.2 lbs/hr (using the 1981 data).

The Agency also asserts that Clinker Cooler No. 2 was also operated in violation of 35 Ill. Adm. Code 212.422(b)(2) which provides for an allowable emission rate of .10 lb/ton of feed to the kiln. On various occasions, the Agency has observed bypasses of the baghouse control on the clinker cooler caused by operation at excessive temperatures. During bypass periods particulate matter is discharged in excess of the applicable standard. The Agency did not receive immediate reports of any of these malfunctions.

Neither Kiln No. 1 nor Clinker Cooler No. 2 was issued permits authorizing operation during malfunctions or breakdown until January and October of 1982 respectively. The Agency asserts that the malfunctions resulted in an unreasonable interference with the enjoyment of life and property in the vicinity of the plant by causing 1) the accumulation of cement dust on homes, cars, and fruit trees; 2) the closure of windows and doors, even in warm weather, to prevent cement dust from entering homes; 3) the settling of cement dust on persons' hair and clothes when outside; 4) additional gutter cleaning due to cement dust accumulations; and 5) the obstruction of views from homes by cement dust in the air.

The settlement provides that Missouri Portland admits that it failed to immediately report a "malfunction" of the air pollution equipment on its No. 2 Clinker Cooler and continued to operate during the malfunctions on two separate occasions. Such conduct is a violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.263 (failure to report a malfunction) and 35 Ill. Adm. Code 201.149 (operation during malfunction). With the exception of these admissions, Missouri Portland denies the remaining allegations of the Agency's complaint. Missouri Portland agrees to pay a stipulated penalty as to the violations admitted of Twenty Thousand Dollars (\$20,000) and also agrees not to engage in any future violations of the Act and Board regulations. Accordingly, the stipulation addresses the concerns as expressed in the Board's order of July 11. However, the stipulation raises an additional concern.

As part of the settlement, the Board is asked to referee any disputes connected with programs to be instituted by Missouri Portland under the settlement agreement. These programs consist of a maintenance program to prevent excessive accumulations of cement dust outside the plant and a program of "periodic visual observation and recording of stack opacity and precipitator power levels for both kilns." (Stip. at 10). These programs are to be submitted to the Agency within 30 days after approval of the

Settlement Agreement by the Board. The Agency may reject or modify the programs; in that event Missouri Portland has ten working days to object. If the objections cannot be resolved informally within 30 days thereafter then Missouri Portland is required to petition the Board within 21 days to resolve the conflict.


Since this process provides that the program be subsequently incorporated into the settlement agreement, it would require that the Board retain continuing jurisdiction over this matter until such time as it is notified that the programs have been agreed to. While the Board certainly has the authority to retain jurisdiction over matters before it, such action is normally taken only in special circumstances. In this instance, no special circumstances exist. The parties have agreed that these two programs should be instituted and have set up a timetable for doing so. It is only the specifics of the programs which remain to be worked out. No explanation is given as to why the Board should approve a settlement agreement which has not yet been "settled" in all respects. As there is no apparent impediment to doing so, the programs should be submitted and approved by the Board as "part and parcel" of the settlement approval process. To do so will eliminate the need for continuing jurisdiction and promote efficiency for all concerned.

Consequently, the Board hereby rejects the revised Stipulation Agreement and Proposal for Settlement. The Board orders that hearing in this matter be scheduled within 90 and held within 120 days of the date of this order. Should the parties determine that they wish to file an amended settlement agreement, they should, according to their agreed-to timetable, submit the programs as part of a revised stipulation. Should the parties be unable to agree on the specifics of the programs, they should submit a statement of reasons for their position on the disputed term[s] from which the Board will be able to resolve the dispute.

IT IS SO ORDERED.

R. C. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of October, 1985, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board