

ILLINOIS POLLUTION CONTROL BOARD
November 7, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-151
)
ARCHER DANIELS MIDLAND,)
a Delaware Corporation,)
)
Respondent.)

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

This matter comes before the Board on remand from the Fourth District Appellate Court of a \$40,000 penalty imposed by the Board against Archer Daniels Midland ("ADM"). Archer Daniels Midland v. Illinois Pollution Control Board, 456 N.E.2d 914 (Ill. App. Ct. 1983). The court sustained the Board's finding that ADM was in violation of certain provisions of the Environmental Protection Act ("Act") but vacated the penalty and remanded it to the Board for further determination. By order of November 8, 1984 the Board established a briefing schedule regarding the penalty issue which contemplated final briefs by January 22, 1985. The parties, however, filed a Stipulation of Penalty on September 23, 1985 which requested that the Board accept ADM'S penalty offer of \$15,000.00. The Illinois Environmental Protection Agency ("Agency") represented that this amount would serve to enhance enforcement of the Act.

The facts giving rise to the Agency's complaint in this matter and the Board's findings are amply set forth in the Board's previous opinion and order in this matter of March 24, 1983. Briefly, the complaint consisted of seven counts which all concerned ADM's discharge of contaminated storm water. The violating facility is a soybean extraction plant, corn germ extraction plant, and a vegetable oil refinery located in Decatur, Illinois. The stormwater becomes contaminated when rain flushes spilled grain and grain products into the stormwater collection system. ADM retains as much of the initial stormwater as capacity will allow which is subsequently discharged to a waste water treatment system. However, on various occasions overflows and bypasses of the retention system have occurred

which resulted in contaminated discharges to a small stream. This stream has been dammed to create the Homewood Fishing Club Lake around which approximately 16 residences have been erected. From the fishing club lake, the water eventually flows into Lake Decatur, a municipal reservoir. The stormwater bypasses were found to violate the Board's rules and the Act as enumerated by the Agency. A \$40,000 fine was imposed.

ADM appealed the finding of violation and the penalty imposed. The Fourth District upheld the Board's finding of violation but vacated and remanded the penalty for redetermination. The Court found that the evidence was insufficient to support the imposition of a \$40,000 penalty because it was arrived at based on an Agency formula which was "so complex that [the Agency's expert] could not explain it." 456 N.E.2d at 919. In addition, the expert failed to present the data upon which the calculations were performed. Accordingly, the penalty was remanded to the Board with instructions to determine whether any penalty was justified and if so, to calculate it in conformity with the court's opinion.

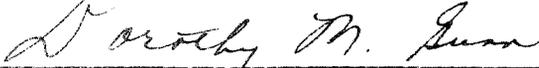
Although ADM denies that under the facts and circumstances of this case that any penalty is proper, the parties, in order to end further litigation, request that the Board accept ADM's penalty offer. (Stip. at 1-2). The Board, however, disagrees with the Agency's assertion that this sum will serve to enhance enforcement of the Act, and hereby rejects the Stipulation of Penalty. Many considerations are relevant in arriving at a penalty amount. These include: the nature of the violation, the violator's efforts to rectify the problem, the environmental harm caused, as well as the economic situation of the violator. The penalty stipulated to herein is inadequate to address these considerations under the facts of this case. The Board points out that the \$40,000 penalty assessed initially by the Board was not rejected as excessive but merely as based on an inadequate foundation. The Board is of the opinion that a substantially higher penalty than \$15,000 is supported by the record given the continuing nature of ADM's violations and the serious environmental consequences. Accordingly, the Board orders that :

1. A hearing to address the appropriate penalty shall be scheduled within 30 and held within 60 days of the date of this order.
2. The Agency shall submit a brief regarding the penalty issue within 30 days of hearing; ADM shall file a Reply Brief 30 days thereafter and the Agency shall file any Rebuttal brief within 14 days after that.

IT IS SO ORDERED.

J. D. Dumelle 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 7th day of November, 1985, by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board