

ILLINOIS POLLUTION CONTROL BOARD
September 21, 1995

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 94-74
)	(Enforcement-Air)
GLEN FEARNEYHOUGH, d/b/a)	
BEARDSTOWN LUMBER & READY MIX,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter comes before the Board upon a one-count complaint filed February 24, 1994, by the Illinois Attorney General, on behalf of the People of the State of Illinois and the Illinois Environmental Protection Agency, against Glen Fearneyhough, d/b/a Beardstown Lumber & Ready Mix (Fearneyhough) located at 15th & Bay Streets, Beardstown, Cass County, Illinois. The complaint alleges that Fearneyhough has violated Section 9(b) of the Illinois Environmental Protection Act (Act), (415 ILCS 5/9(b)) and 35 Ill. Adm. Code 201.143 and 201.146 by constructing and operating emission sources without the proper permits.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act's hearing requirement on August 17, 1995. The Board published a notice of the waiver on August 24, 1995; no objection to grant of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a stipulation and settlement Agreement on August 17, 1995. The stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Fearneyhough admits the alleged violations and agrees to pay a civil penalty of five hundred dollars (\$500.00).

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 Fearneyhough, concerning his facility located at 15th & Bay Streets, Beardstown, Cass County, Illinois. The stipulation and settlement agreement are incorporated by reference as though fully set forth herein.
- 2) Fearneyhough, shall pay the sum of five hundred dollars (\$500.00) 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

The certified check or money order shall clearly indicate on its face, Fearneyhough's Federal Employer Identification Number or Social Security Number and that payment is directed to the Environmental Protection Trust Fund.

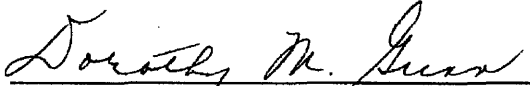
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

- 3) Fearneyhough shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of September, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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STATE OF ILLINOIS

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POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

v.

PCB No. 94-74

Respondent.

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the Illinois Environmental Protection Act (415 ILCS 5/1-57.17 (West 1992)). Subject to the foregoing understanding and agreement, it is further agreed as follows:

I.

STIPULATION OF FACTS

1. The respondent, Fearneyhough, is a resident of Cass County.
2. At all times relevant to this complaint, Fearneyhough has been doing business as Beardstown Lumber and Ready Mix.
3. In his business Fearneyhough operates a ready mix concrete plant.
4. The concrete plant's components include a cement silo and fabric filter.
5. The cement silo and fabric filter were constructed prior to December 11, 1990.
A second fabric filter was installed in 1994.
6. Fearneyhough did not obtain air pollution operating permit for the concrete plant until November 2, 1994.

II.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Subsection 33(c) of the Act (415 ILCS 5/33(c) (West 1992)) provides:

- "c. In making its orders and determinations, the Board shall take into consideration bearing upon the reasonableness of the emissions, discharges, or deposits involving 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; and
5. any economic benefits accrued by a noncomplying 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. Respondent's above-detailed alleged violations impacted the Agency and the public, in that Fearneyhough's failure to timely obtain construction and operating permits interfered with the Agency's duty to regulate via permit the purity of the air in this state and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution.

B. The parties agree that Fearneyhough's facility is of economic benefit to the surrounding community. Any social benefit is derived primarily from those employed by the facility.

C. The parties agree the Fearneyhough's facility is suitable to the area in which it is located, based on the presumption that said facility is operated in compliance with the Act (415 ILCS 5/1 et seq. (West 1992)).

D. The parties agree it is technically practicable and economically reasonable to take steps to remedy the above-detailed violation.

E. Fearneyhough did accrue an economic benefit of at least \$300.00 by his failure to comply with the Act (415 ILCS 5/1 et seq. (West 1992)).

F. The Agency has not obtained any evidence of any impact from operation of the concrete plant on neighbors of the facility.

G. The parties agree that after the filing of the complaint with the Board, Fearneyhough has taken steps to remedy the above-detailed instance of noncompliance.

III.

DETERMINATION OF APPROPRIATE CIVIL PENALTY

Subsection 42(h) of the Act (415 ILCS 5/42(h) (West 1992)) provides:

- "h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of 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 the 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:

- A. The violation lasted at least five years.
- B. Fearneyhough has obtained the necessary permits.
- C. Fearneyhough accrued a modest economic benefit by his failure to comply.
- D. A civil penalty of \$500.00 will deter Fearneyhough from future violations.
- E. Fearneyhough has no previously adjudicated violations of the Act.

IV.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This stipulation and proposal for settlement in no way affects the responsibility of Fearneyhough to comply with any other federal, state or local laws or regulations, including, but not limited to, the Act (415 ILCS 5/1. et seq. (West 1992)) and the Illinois Pollution Control Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A. through H.

V.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act.

VI.

APPLICABILITY

This stipulation and proposal for settlement shall apply to and be binding upon the complainant, the Agency, and Fearneyhough. Fearneyhough shall not raise as a defense to any action to enforce this stipulation and proposal for settlement the failure of any of the above to take such action as shall be required to comply with the provisions of this stipulation and proposal for settlement.

VII.

PROPOSAL FOR SETTLEMENT

1. Fearneyhough agrees to the payment of the penalty described in paragraph 2.
2. Fearneyhough shall pay a civil penalty of five hundred dollars (\$500.00). The penalty shall be paid by certified check, within 30 days of the issuance of the Board order,

payable to the Treasurer of the State of Illinois, for deposit in the Environmental Protection

Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road, P.O. Box 19276
Springfield, IL 62794-9276

The name, number of the case, and Fearneyhough's Federal Employer Identification Number ("FEIN") shall appear on the certified check. For the purpose of payment and collection,

Fearneyhough may be reached at the following address:

15th & Bay Streets
Beardstown, IL 62618

A copy of the payment transmittal and check shall be simultaneously submitted to:

Environmental Bureau
Attn: Donna Lutes
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

3. Fearneyhough shall cease and desist from any further violations of the Act (415 ILCS 5/1, et seq. (West 1992)).

4. Fearneyhough admits the violations as alleged in the complaint that he did not obtain construction or operating permits.


WHEREFORE, the complainant and respondent request that the Board adopt and accept the foregoing stipulation and proposal for settlement.

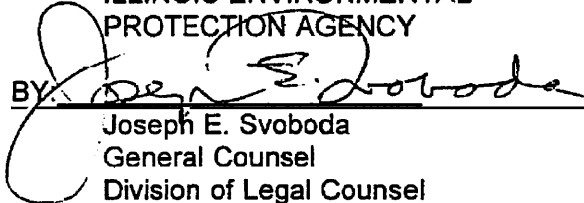
Respectfully submitted,

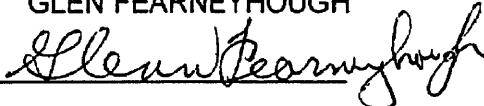
PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
State of Illinois
Attorney General

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: 
THOMAS DAVIS, Acting Chief
Environmental Bureau
Assistant Attorney General

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PROTECTION AGENCY
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Joseph E. Svoboda
General Counsel
Division of Legal Counsel

GLEN FEARNEYHOUGH
BY: 

FEIN: _____