

ILLINOIS POLLUTION CONTROL BOARD
March 17, 1977

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. WILLIAM J. SCOTT, ATTORNEY)
GENERAL OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 76-100
)
BRIGHTON BUILDING AND MAINTENANCE)
COMPANY, a Delaware corporation,)
WESTERN ASPHALT PAVING COMPANY, an)
Illinois corporation, WESTERN ASPHALT)
MANUFACTURING COMPANY, an Illinois)
corporation, LANGHORNE BOND, as)
Secretary of the Illinois Department)
of Transportation,)
)
Respondents.)

Mr. Marvin Medintz, Assistant Attorney General, appeared for the Complainant;
Messrs. Clifford L. Weaver and Christopher J. Duerksen, Attorneys, appeared for Respondent Illinois Department of Transportation;
Mr. Warren Fuller, Attorney, appeared for Respondents Brighton Building and Maintenance Company, Western Asphalt Paving Company, and Western Asphalt Manufacturing Company.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on an Enforcement Complaint filed by the Attorney General on April 13, 1976, alleging violation by the various Respondents of §9(a) of the Environmental Protection Act (Act) and Rule 102 of Chapter 2: Air Pollution, of this Board's Rules and Regulations. Ill. Rev. Stat., Ch. 111-1/2, §1009(a)(1975); Ill. PCB Regs., Ch. 2, §102(1976). Those violations were alleged to have arisen as a result of activities undertaken in connection with the resurfacing of Interstate Route 55 (Stevenson Expressway) near its junction with Halsted Street, in Chicago, and to have involved the emission of "vast quantities of black smoke containing enormous quantities and concentrations of particulate matter..."

At a hearing held in Chicago on December 10, 1976, no testimony or evidence was introduced, but the parties submitted a Stipulation and Proposal for Settlement (Stipulation), which forms the basis for this Opinion and Order. No comments were received from the public.

The Stipulation indicates that the alleged emissions occurred as the result of bridge deck resurfacing on the Stevenson Expressway near Halsted Street. Under a contract awarded by the Illinois Department of Transportation, the corporate Respondents in this matter were using a "heater-planer" technique to soften and remove the top asphalt layer and the middle coal-tar layer from the existing roadway, so that new layers of material could be substituted. A heater-planer (gas or oil-fired) consists of a heating chamber with burners underneath through which heat and flame are transmitted to the roadway, softening the asphalt and coal-tar.

On or about April 12, 1976, overheating in the heater-planer operation caused incomplete combustion of the underlying materials. Although the Stipulation contains no admission of violation, it is stated that this overheating did cause black smoke and particulate matter to be emitted, (Stip., ¶8). Although Complainant contends that a causal relationship exists, the parties did not agree in the Stipulation that there was any connection between those emissions and high ambient air quality readings for particulate matter between April 12, 1976 and April 15, 1976, (Stip., ¶9). On April 14, 1976, however, the Department of Transportation did notify the private, corporate Respondents in this matter to use an alternate method for repairs on the Stevenson Expressway.

Although the parties agreed that no method was known to the Department of Transportation prior to that time, an alternate method ("the autograder"), costing \$68,250.00, was obtained by the corporate Respondents. The alternate method involved no combustion, with no resulting emissions.

In settlement of the matter, the parties uniformly agree that the public interest would not be served by further litigation. Although no violation is admitted, the corporate Respondents have agreed that in order to prevent any possible violation in the future, the following actions will be taken:

1. Heater-planers will be used for bridge deck repair only when alternative equipment is not available.
2. Heater-planers which are used shall be designed and operated so as to minimize emissions.
3. All heater-planer operators will be instructed in operation methods, and will also be instructed to cease the use of heater-planers whenever smoke or particulate matter exceeds 30 per cent opacity for more than one minute, or for more than four minutes in the aggregate in any 60-minute period.

While the Department of Transportation similarly does not agree that a violation actually occurred, it has agreed to the following actions to prevent any possible future violations:

1. A specific provision requiring contractor compliance with the Act and the rules adopted thereunder will be included in its next revision of Standard Specifications for Road and Bridge Construction.

2. A similar provision will require that all equipment utilized in the removal of roadway surfaces or waterproofing membranes meet, and be operated so as not to exceed, a visual limitation of 30 per cent opacity (or Ringelmann I), as described above.

Finally, the parties ask that the Board dismiss this case upon acceptance of the Stipulation.

The Board has consistently held that it has a special interest in cases brought before it, and that it must pass upon any settlement among parties to such action. See, e.g., GAF Corp. v. EPA, PCB 71-11, 5 PCB 525 (1972). However, "we have consistently afforded considerable latitude to the adversary parties in achieving a consent order that resolves the controversy and provides for adequate future control of pollution without further expensive litigation, provided that the settlement is not such as to encourage disregard for the law by grossly underpenalizing past defaults." EPA v. City of Silvis, PCB 71-157, 5 PCB 205 (1972). Although there is no penalty provided by the settlement in this case, nor even a finding of violation, we find that the requirements for settlement adequacy have been met.

It is clear that the changes of procedure, by both the private, corporate Respondents and the State Department of Transportation, should serve to alleviate any such problems in the future. Acceptance of the Stipulation, besides preventing future problems with these Respondents, will encourage compliance by other, similarly situated, respondents. The Department of Transportation's inclusion in its Standard Specifications for Road and Bridge Construction of provisions requiring compliance will be of considerable help in the enforcement of the Act, and in obtaining its goals.

We accept the Stipulation and Proposal for Settlement, and our Order shall read accordingly.

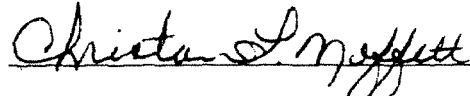
This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that the Stipulation and Proposal for Settlement submitted by the parties to this matter be accepted; accordingly, the instant matter is dismissed, conditioned upon compliance by all parties to this matter with all terms and conditions thereto.

Mr. Jacob Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17th day of March, 1977, by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board