

ILLINOIS POLLUTION CONTROL BOARD  
February 28, 1974

ENVIRONMENTAL PROTECTION AGENCY )  
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 )  
 v. ) PCB 73-309  
 )  
 )  
 METAL DROSS CORPORATION )  
 )

MR. PHILLIP A. YAFFA, appeared for Metal Dross Corporation  
MR. JOHN E. SLATTERY, Assistant Attorney General, appeared for  
the Environmental Protection Agency

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

A complaint was filed on July 30, 1973 against Metal Dross Corporation, a metal reclamation facility in Batavia, Kane County, Illinois. The complaint alleged both air and water regulation violations and violations of the Environmental Protection Act as detailed below.

Air pollution violations from November 17, 1971 to the date of filing of the complaint were alleged of Sections 9(a) and (c) of the Act and of Rules 2-1.1 and 2-1.2. Also alleged from April 14, 1972 to the date of filing were violations of Section 9(c) of the Act and Rule 502(a) because of open burning of refuse contained in copper mud-waste material. Violations of Rule 109 were alleged for the same April 14, 1972-July 30, 1973 period by burning copper mud-waste material on the floor of respondent's building in such a way as to conceal the total amount of air contaminants emitted to the atmosphere. For the period from November 17, 1971-April 13, 1972 the same type of violations is alleged against Rule 3-3.400.

The water pollution violations were alleged from January 22, 1973 to July 30, 1973 by placing oil wastes on land so as to create a water pollution hazard (Section 12(d) of the Act) and by releasing excessive amounts of copper, lead, zinc, visible oil, color and turbidity above obvious levels such as to violate Section 12(a) of the Act and Rule 403. The installation of a baffle without a

permit (Rule 903(a) and Section 12(b) of the Act) and its operation by the respondent in an improper manner during flooding and adverse weather contingencies in violation of Rule 601(a) is alleged for the same period. Violations of Rules 203(a) and 402 are alleged from January 30, 1973 to July 30, 1973 by causing or allowing unnatural bottom deposits, visible oil and unnatural color and turbidity to be present in the stream to which the respondent's effluent discharges. Water quality standards violations were alleged between February 6, 1973 and July 30, 1973 for copper, lead and zinc in the same stream in violation of Rules 203(f) and 402.

On October 4, 1973 a hearing was held in Batavia. Commissioner Eldon Fryendall of the Batavia Park District told of the discovery about two years earlier of oil coming from respondent's building into the stream (R. 5). Counsel for respondent stated that the site has been cleaned and leveled and that no problems should recur (R. 7). Dick Young, Environmental Director for Kane County, testified that in his opinion the bulldozing work done would eliminate oil running into the stream.

On November 15, 1973 a second hearing was held in Batavia and a Stipulation and Proposal for Settlement was received. No members of the public were present.

The stipulation states that the founder and president of the firm died on May 23, 1972 and that as a result the board of directors and shareholders met and voted on July 5, 1973 to dissolve the corporation. A certified copy of the resolution authorizing the dissolution of the corporation was submitted as Exhibit "B". The stipulation further promises that after dissolution the business will not be carried on under a different name or style.

The proposed settlement contains an admission by the respondent to all allegations contained in the complaint. The terms of the settlement are as follows:

The parties hereby stipulate and agree that the settlement of the above-entitled enforcement action shall be as set forth below. The proposal settlement is expressly conditioned upon, and effective only with approval thereof in all respects by the Illinois Pollution Control Board of this Stipulation and Proposal for Settlement. If for any reason, the Pollution Control Board has any objection to the aforesaid Stipulation and Proposal for Settlement, then the Stipulation and Proposal

for Settlement shall be null, void and of no effect. The parties further stipulate that any admissions and all statements contained herein shall be null, void and of no effect in the event that the Board fails to approve the following terms of settlement in all respects:

1. Metal Dross Corporation admits all the facts and allegations complained of in the Complaint filed in the instant cause.
2. Metal Dross Corporation will commence voluntary dissolution in the State of Delaware and will serve copies of the Articles of Dissolution upon the Secretary of State of Illinois.
3. Metal Dross Corporation will cease and desist in all of its operations and will no longer carry on business in the State of Illinois after October 15, 1973; and, further, it will liquidate all of its assets pending determination of this litigation.
4. Metal Dross Corporation agrees that it will not form another business entity to conduct a like business on the premises, and that the assets will be disposed of in such a manner that a like business will not be conducted on the premises, as described in the Complaint. (Exhibit "A").
5. Metal Dross Corporation agrees to remit to the State of Illinois \$2,000.00 for the violations of the Air Pollution Regulations and \$1,000.00 for the violations of the Water Pollution Regulations in penalty for the violations as alleged in the Complaint.

The settlement provides that it must be approved in all respects by the Board otherwise it shall be null, void and of no effect. While we have little in the record as to the environmental effects or damages sustained because of the admitted violations we do feel that acceptance should be made of the settlement. The problem has been corrected as shown by the testimony of Mr. Young. The corporation was to go out of business on October 15, 1973 and needs to settle this claim in order to do so. We accept the settlement as proposed. Since the corporation is dissolving no cease and desist order seems necessary.


This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Stipulation and Proposal for Settlement filed November 15, 1973 is accepted in full.
2. Metal Dross Corporation shall within 35 days remit to the State of Illinois the sum of \$2,000 for stipulated violations of the Air Pollution Regulations and the sum of \$1,000 for stipulated violations of the Water Pollution Regulations. Payment shall be made by certified check or money order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28<sup>th</sup> day of February, 1974 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board