

ILLINOIS POLLUTION CONTROL BOARD
August 9, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 90-7
) (Enforcement)
)
BLUE TEE CORPORATION (Azcon Scrap)
Division), a Maine Corporation,)
)
Respondent.)

MICHAEL K. FRANKLIN AND JAMES J. O'DONNELL APPEARED ON BEHALF OF
COMPLAINANT;

KENNETH E. BALSTERS APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon a "Motion for Reconsideration and/or Modification" filed on July 27, 1990 from the Board's July 19, 1990 Opinion and Order accepting a stipulation and settlement agreement between complainant and respondent. On January 16, 1990, the Illinois Environmental Protection Agency (Agency)¹ filed a complainant against respondent Blue Tee Corporation (Blue Tee). The complaint alleges that Blue Tee has committed a continuous violation of Sections 9(a) and 9(c) of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 237.102(a) in conducting its scrap metal reclamation facility in Alton, Madison County, Illinois.

Hearing on this matter was held June 22, 1990 in Alton, Illinois. At hearing the parties submitted an executed Stipulation and Settlement Agreement. This agreement sets forth facts pertaining to the nature, operations and circumstances surrounding the alleged violations. Blue Tee does not admit or deny the alleged violations of Sections 9(a) and 9(c) of the Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1009(a), (c)) and 35 Ill. Adm. Code 237.102(a), which pertain to open burning, and agrees to pay a

¹ The Board notes that while the settlement agreement states that this matter was filed on behalf of the "People of the State of Illinois", the complaint states that it was filed by the "Illinois Environmental Protection Agency". On July 10, 1990 the Agency filed a corrected front page to the settlement agreement, served on the respondent, correcting the settlement agreement so that it conforms to the complaint.

civil penalty of eleven thousand five hundred dollars (\$11,500).

On July 19, 1990, the Board entered an Opinion and Order stating that "Blue Tee admits to past violations of Sections 9(a) and 9(c) of the Act ... and 35 Ill. Adm. Code 237.102(a) ... and agrees to pay a civil penalty of eleven thousand five hundred dollars (\$11,500)." On July 27, 1990, Blue Tee filed a "Motion for Reconsideration and/or Modification" of the Board's Opinion and Order. According to Blue Tee, the Board incorrectly stated that Blue Tee had admitted the violations when, in fact, Blue Tee did not admit or deny the violations. The Board's review of the record reveals that Blue Tee did not admit or deny the violations and, therefore, the motion for modification is granted. This Opinion and Order corrects the error contained in the July Opinion and Order. The Board hereby vacates its Opinion and Order of July 19, 1990.

The Board has the authority to impose a penalty where the parties have stipulated to a penalty, but not to a finding of violation. (Chemetco, Inc. v. PCB, 488 N.E.2d 639, 643 (5th Dist. 1986; Archer Daniels Midland v. PCB, 489 N.E.2d 887 (3d Dist. 1986).)

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This agreement, however, in no way affects Blue Tee'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 Agency and Blue Tee Corporation concerning Blue Tee's operations located in Alton, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2.) Blue Tee shall pay the sum of eleven thousand five hundred dollars (\$11,500) within 30 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasure 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

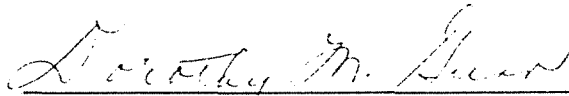
P.O. Box 19276
Springfield, Il 62794-9276

Blue Tee shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9th day of August, 1990, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board