

ILLINOIS POLLUTION CONTROL BOARD
November 21, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-122
)
JENNISON-WRIGHT, CORP.,)
)
Respondent.)

ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on an August 23, 1983, Complaint and July 25, 1984, Amended Complaint filed by the Illinois Environmental Protection Agency ("Agency") against the Jennison-Wright Corporation ("Jennison-Wright") and J.W. Liquidating Corporation ("J.W. Liquidating"). The Complaint concerns a plant in Granite City, Illinois, which manufactures and treats a variety of wood and wood products. The complaint focuses on two processes used at the plant to impregnate wood as a preservative against the elements; one process employs creosote as the preserving agent, the other employs pentachlorophenol. The complaint charges that various operations at the plant since the early 1970's constitute violations in that the operations were either not permitted or were conducted in a manner inconsistent with statutory and regulatory requirements..

Hearing was held November 29, 1984, at which the broad outline of a settlement agreement was discussed on the record. A second hearing was held August 9, 1985, at which time a formal Stipulation and Proposal for Settlement ("Settlement") was presented.

Settlement Procedures in enforcement actions before the Board are governed by 35 Ill. Adm. Code 103.180. That regulation addresses the contents of settlement documents, in relevant part, as follows:

- 1) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations;
- 2) The nature of the relevant parties' operations and control equipment;
- 3) Any explanation for past failures to comply and an assessment of the impact on the public resulting from such noncompliance;

- 4) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation; and
- 5) The proposed penalty.

The Board finds that the Settlement fails to meet criteria #1, #3 and #4.

The Settlement contains 18 numbered paragraphs entitled Statement of Facts. Paragraphs one through ten describe the facility and its past and present ownership and operations. Paragraph 11 states that J.W. Liquidating did not have a permit to dispose of wastes, which disposal was described in the preceding paragraphs. Paragraphs one through eleven would support a finding of waste disposal without a permit. Paragraph 12 describes a "discharge of wastewater" into water on property of the Norfolk and Western Railway, but does not describe whether such discharge was permitted. Paragraph 13 states the creosote system pit may have been unlined, and may have contaminated the ground. Paragraph 14 describes a failure to obtain permits for two 10,000 gallon fuel oil storage tanks and, construction and operating permits for the pentachlorophenol system. Paragraph 15 describes prior permitting activity regarding the plant. Paragraph 16 describes utilization of an unpermitted creosote water separator. Paragraph 17 describes J.W. Liquidating's failure to submit a Part A application to USEPA for disposal of hazardous waste. And finally, Paragraph 18 describes a failure to notify the Agency of transfer of ownership of a facility where hazardous waste operations have been conducted.

This factual representation presents several difficulties. First, the generalized permitting statement in Paragraph 14 has made it difficult for the Board to determine which activities were permitted and which were not and the time periods involved. The Board would appreciate clarification. Second, and more importantly, the Board notes that this proceeding involves unpermitted disposal of hazardous waste, including what appears to be acutely hazardous waste*, with factual statements about possible contamination (Paragraph 13). However, there are no facts before the Board relating to this extremely important subject. The Board finds the facts presented are inadequate on this matter.

* The settlement describes wastes from three materials, creosote, pentachlorophenol, and coal tar. The pentachlorophenol wastes appear to be Acute Hazardous Wastes: Section 721.13 [F020]. The creosote and coal tar wastes appear to be Hazardous Wastes: Section 721.133 (f) [U051] and Part 721, Appendix H.

Another major problem area is the "Compliance Program." This portion of the Settlement says, in essence, to find out what is wrong, and fix it. Any disputes regarding interpretation are to be brought to the Board under the "Dispute Resolution" provisions. While this is a laudable concept, it lacks the "details" including "control measures" and "dates for their implementation" required by criterion five of the Board's Settlement Procedure regulation. Moreover, unless the parties agree in the future on the scope, detail, and timing of the compliance effort the Board is left with very little guidance other than "appropriate remedial action" (Settlement, p. 8).

As a final problem area, the Board notes that the Settlement may violate existing RCRA procedural rules. Specifically 35 Ill. Adm. Code 103.260(b)(4) may require the Board to follow the procedures of 35 Ill. Adm. Code Part 103, Subpart I. Section 103.260 provides:

Section 103.260 Purpose, Scope and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement action involves issuance or modification of a RCRA permit;
- b) Enforcement actions which involves issuance or modification of a RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:
 - 1) revoke a RCRA permit; or
 - 2) order a RCRA permit issued or modified; or
 - 3) enter an order which could require actions which would be different from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or
 - 4) enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.
- c) These procedures provide methods by which the Board will formulate a compliance plan, and if necessary, direct the issuance or modification of a RCRA permit.

It would appear in this case that the Board could find the facility was operating without a RCRA permit and that one was required. Also, the compliance program could require facility closure or modification. If this occurred, the Provisions of Subpart I would clearly apply.

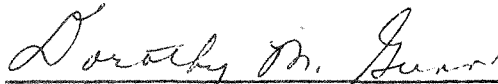
For the foregoing reasons, the Board must reject the Stipulation and Proposal for Settlement in its entirety. As this

enforcement action is several years old, the Board Orders it to proceed to hearing expeditiously. Hearing must be scheduled within 90 days and commenced within 120 days.

Not later than December 15, 1985, the parties are directed to file briefs on whether the provisions of 35 Ill. Adm. Code Part 103, Subpart I apply to this proceeding and whether, pursuant to Section 103.260(a) an Interim Order to that effect is appropriate.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 31st day of November, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board