

ILLINOIS POLLUTION CONTROL BOARD
November 18, 1983

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-28
)
TOP CHOP, INC., an Illinois)
corporation,)
)
Respondent.)

ORDER OF THE BOARD (by W. J. Nega):

On June 2, 1983, the Board issued an Opinion and Order in this enforcement action, accepting a stipulated settlement of this matter provided that the parties would agree to modification of the penalty figure from \$1500.00 to \$5000.00. The Order provided that Top Chop was to certify its acceptance in writing within 30 days (i.e., by July 2), or "the Stipulation and Proposal for Settlement [would] be rejected in toto by the Board and the case [would] be remanded to the parties for appropriate action" (Opinion, p. 4). No written certification of acceptance of the \$5000.00 penalty was filed.

On June 30, 1983, Top Chop submitted a letter to the Board containing information relating to its financial condition. The Attorney General, on behalf of the Agency, requested that the letter be stricken on several grounds: 1) as being an ex parte contact, 2) as containing information of a mitigating nature which the Agency had not "had the opportunity to investigate... and obtain...through discovery procedures", and to which "the Agency had not been given the opportunity to respond...or to subject...to the scrutiny of cross examination", (July 15 Motion, p.2), 3) as being a procedurally improper motion for reconsideration, and 4) as being inconsistent with the terms of the Board's Order providing that if the \$5000 penalty were not accepted, that the case would be remanded to the parties. In the latter context, the Agency noted that it intended "to initiate discovery of Top Chop's financial condition to evaluate whether a substantial penalty will impose an undue financial hardship on Top Chop." The Board granted the Agency's motion to strike on July 26, 1983.

On October 24, 1983, Top Chop filed what it has called a "Resolution for Reconsideration and Modification of the Order of the Board". (The cover letter from Senator Vince Demuzio will be included in the record as a public comment, as is the Board's usual practice with communications from the public, including elected officials.) The motion, submitted assertedly on the advice of the Agency, requests the Board to reconsider its rejection of the \$1500 penalty. Appended thereto are answers to Agency interrogatories.


Top Chop's motion does not contain proof that service was made on the Attorney General; however, the Clerk of the Board provided a copy to the Attorney General. On November 16, 1983, the Attorney General filed a Response to Top Chop's motion, requesting that the motion be stricken. The essence of the Attorney General's response is that Top Chop has again presented "evidence" which has not been subject to Agency cross-examination or rebuttal, and that Top Chop's "resolution raises several issues which would bear on the appropriate penalty that should be imposed and to which the Agency should be allowed to respond at a public hearing after additional discovery" (Agency Response, p. 1).

Top Chop's October 24, 1983 "Resolution" is stricken from the record. To set this matter once again on a proper track and consistent with the Board's Order of June 2, 1983, the Stipulation and Proposal for Settlement submitted by the parties April 28, 1983 is rejected by the Board in toto, and the case is remanded to the parties for further action. In so ordering, the Board is not implying that the parties are foreclosed from the stipulating to uncontested facts. However, any such subsequent stipulation(s), as well as any contested penalty or other issues, must be fully presented at an additional hearing.

IT IS SO ORDERED.

Board Member J. Marlin abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18th day of November, 1983 by a vote of 6-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board