

ILLINOIS POLLUTION CONTROL BOARD  
September 16, 1971

Employees of Holmes Bros., Inc. )  
by F. Estel Williams, Chief )  
Engineer )  
 )  
v. ) PCB 71-39  
 )  
Merlan, Inc. and L. Mervis, )  
President )  
 )  
Environmental Protection Agency, )  
Intervenor )

Mr. John E. Sebat of Sebat, Swanson & Banks for Merlan, Inc. and  
L. Mervis

Mr. Frederick Hopper for the Environmental Protection Agency

Opinion of the Board (by Mr. Kissel):

On March 8, 1971, the employees of Holmes Bros., and property owners and tenants in the vicinity, filed a Complaint with the Board against Merlan, Inc. and L. Mervis, President. The Complaint, filed on a Board complaint form, alleged that the Respondents, who operated a plant in Danville, Illinois, created a public nuisance, violated Section 9(a) of the Environmental Protection Act in causing air pollution, violated Section 9(b) of the Act, and violated Sections 21(b) and (c) of the Act in dumping excessive water on the street. On April 23, 1971, the Board received a letter from F.E. Williams stating that he talked to Mr. Mervis and that Mervis had agreed to certain improvements in material handling, including reducing the height of stockpiles, installing a fence and installing a feeder system for the raw materials at a lower level, and, as a result, the Complainants asked that the Board "table" its Complaint of March 4, 1971. Before the Board took action on the request of the Complainants, the Environmental Protection Agency (the "Agency") through the Attorney General of the State of Illinois, filed a Petition to Intervene in the case and filed a Complaint with the Board. The Complaint alleged that since July 1, 1970, Merlan has caused and does cause the discharge or emission of iron filings and other contaminants into the environment so as to cause air pollution within the meaning of Section 9(a) of the Act and asked the entry of an order against Merlan to cease and desist the violations

of the Act, and to pay penalties for past violations of the Act. In an Opinion dated May 12, 1971, the Board granted the Agency's Petition to Intervene, and ordered that the case be set for hearing. No action was taken on the original Complainant's motion to table the proceedings because there was now a new complainant, the Agency.

Merlan operates a briquetting plant in Danville, Illinois. It converts cast iron borings and steel turnings into solid cylinders about five inches in diameter and eleven inches in length. The borings and turnings are the waste products of industrial plants and cannot be used again unless they are made into solid blocks. The compacted steel blocks are used to replace scrap metal in blast furnaces, but the borings and turnings themselves could not be used in the furnaces because they would flash and not melt as the blocks do.

Merlan receives the borings and turnings in open gondola railroad cars and are tested by Merlan for mineral, moisture and oil content. If the tests show that the material is acceptable, the cars are unloaded by a crane operated electromagnet. The material is loaded on the grizzly. If not put directly on the grizzly, the materials are stockpiled on the grounds of the plant. The grizzly has an oscillating effect which permits the usable material to drop through the screens onto an enclosed hopper where they are moved by an enclosed conveyor to a higher hopper. Gravity, then, feeds the material into the hydraulic presses for compression into the cylindrical briquettes, or finished product. The briquettes are automatically loaded by conveyor onto gondola railroad cars for shipment to customers. At this time, according to the Merlan brief, the local General Motors factory takes the entire production of Merlan.

Although the employees of Holmes Bros., Inc. did not wish to present their case as Complainants, many of the persons did testify as to the conditions which exist in and about the Merlan plant. Essentially, the persons who work and live in the area surrounding the Merlan plant have three basic complaints: 1) the dust from the piles and the unloading operation; 2) the smoke from fires in the stockpiles; and 3) the oily odor which prevails from the piles themselves. While there was some question in the minds of some of the witnesses as to the source of the dust and the odor, there was no question that recent fires on the Merlan plant grounds have interfered with the life and property of the neighbors and nearby workers. In fact, one witness, Leo Smith, testified that the piles would smolder a "few days" before they burst into flame. Depending on the wind condition at the time, the smoke could and did travel over the neighbors' property. Luther Parker described the smoke from the stockpile fires as "serious and profuse". In general, when

the fires did occur, they spread a blanket of smoke throughout the neighborhood which would interfere with the enjoyment of the life and property of the people anywhere nearby.

The odor has also caused problems. Each of the witnesses who appeared testified to an "oily" odor which emanated from the Merlan plant. Geneva Oliver said the odor made her cough and Leo Smith said that the odor was "sickening". Mary Smith said the odor smelled like "oily vomit" and she, as other witnesses had done, traced the odor to the Merlan plant by walking to the site, noticing that the odor intensified as she walked closer to the Merlan plant. The odor was also described as "nauseating" and one witness stated that the odor was not noticed in the neighborhood until the Merlan plant began operation in 1967. It is clear from the record that Merlan does emit an odor which has interfered with the enjoyment of life and property in the neighborhood.

All of the witnesses complained of the dust emitted from the Merlan plant. It was described as brownish in color and samples of the dust were identified by almost all of the witnesses. The dust apparently arises from the handling of the borings and turnings. When the electromagnet is used, the borings and turnings are brought up from the ground, or the railroad car as the case may be, and dust is loosened by the quick raising action. The dust is also generated by wind blowing across the stockpiles and the agitation of the borings and turnings in the grizzly. All of this agitation or movement of the borings and turnings causes the dust attached thereto to loosen and the dust is carried by the wind onto the neighbors' property. F.E. Williams, who works for the Holmes Bros., which is directly south of the Merlan plant, testified that he parked a "relatively clean" car near the Merlan plant and within a relatively short time his car was covered with the brown dust. He noticed that the dust was a particular problem when the wind was from the north blowing over the Merlan property. Geneva Oliver was not completely sure that the dust came from the Merlan plant, but the dust of similar description to that which came from the plant made her house dirty. Lee Moreman said that the dust from the Merlan plant appeared on his windowsills and car. While there may be some question as to the source of the dust which was testified to by many of the witnesses, we find that there was sufficient connection with the Merlan plant to say that the source of the dust was the handling operations in the plant, and the dust is of sufficient quantity to interfere with the life and enjoyment of the property of Merlan's neighbors.

The sole issue in this case concerning the liability of Merlan is whether Merlan is guilty of causing "air pollution" in violation of Section 9(a) of the Act. "Air pollution" is defined by the Act as follows:

" . . . the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

It is clear from the record in the case that the operations of Merlan have "interfere(d) with the enjoyment of life and property" of the neighbors in allowing the dust emissions to continue, and in allowing the smoke and odors to be emitted. The question remains as to whether the interference was "unreasonable" as provided in the Act. This Board has interpreted that word in the Act in a recent case before it. In Moody v. Flintkote, PCB 71-67, dated March 30, 1971, the Board held that the emissions of contaminants were "unreasonable" if, in fact, there was any interference with the enjoyment of life and property, and there was technology available to control the contaminant emission source which was technically feasible and economically reasonable. Since we have already found on the record in this case that Merlan's operations did interfere with the enjoyment of life and property, the question remains whether the described technology is available.

The entire source of Merlan's contaminant emissions is the storage and handling procedure employed with the turnings and borings which are used by Merlan to make briquettes. The smoke emissions came from fires which apparently started spontaneously because the stockpiles were too high. The "oily" odor came not only from the burning piles, but from the storage of the materials in the open. The dust comes from the handling of the turnings and borings by using the electromagnet to unload the railroad gondola cars which contain the turnings and borings and to transfer the turnings and borings from the stockpiles to the grizzly and from the operation of the grizzly. Based upon the testimony in the record, not only has Merlan already taken action to correct some of the problems, but it is evident that sufficient other material handling technology exists to completely control the emissions of dust, odor and smoke. Up to this time Merlan has lowered its stockpiles, built higher fences to trap the windblown dust, enclosed hoppers and conveyors, lowered the grizzly from 65 to 25 feet and put sides on the grizzly. Merlan has plans to do other things which will indeed control the emissions further. This involves further lowering the grizzly so that its top will be within 5 feet above the ground enabling it to be loaded by a bucket endloader. This type of loading will eliminate the puff of dust which occurs when the grizzly is loaded with

the electromagnet. In the 8 foot pit below the top of the grizzly the bucket, the elevator system, the bottom oscillator and other conveyor equipment will be enclosed by steel plates. This new grizzly system is to be installed by September 30, 1971 at a cost of \$15,000.

In addition, Merlan's consultant, Dr. Mijo Matkovic, has suggested the installation of a cyclone system which would be put on the grizzly. This system when installed will collect 96% of the dust emissions from the loading and operation of the grizzly. The cost of this cyclone will be \$19,000.

Merlan has stated that it will no longer use the electromagnet in the loading of the grizzly, but it is unclear whether its use will be discontinued in unloading the railroad gondola cars. Dust can be emitted at that point in the material handling operation as well. In fact, the record is fuzzy about what, if anything, Merlan intends to do about the unloading of these cars, and the stockpiles themselves. It was apparent that dust was being blown from the piles, and that the fence was inadequate to catch the materials. We, therefore, will order Merlan to submit a program for the control of this part of the operation, which submission shall include a detailing of what can be done, at what cost, and in what amount of time. One of the areas which should be covered is the technical feasibility and cost of enclosing the stockpile area. It will be ordered that the report should be filed with the Board and the Agency within 45 days from the date of the Board's order, and the Agency shall submit comments and recommendations to the Board and Merlan within 15 days after receipt of the report from Merlan. The Board shall enter such further order at that time as the Board shall deem appropriate.

One issue remains. The Agency has asked that the Board assess money penalties against Merlan for the violation of the Act since July 1, 1970. We do not agree that money penalties should be assessed in this case. While the record does indicate that Merlan was violating Section 9(a) of the Act, the record is also clear that Merlan has made substantial efforts to control its dust, smoke and odor problem. Merlan had been visited by the Agency representatives and in a letter to Merlan dated January 27, 1971, the Agency said that Merlan had taken "appropriate action for the correction of the complaints". Further, when Merlan was faced with the complaint by the employees of Homes Bros., Inc., Mr. Mervis, the president of Merlan met with F.E. Williams and agreed to certain steps to try to solve its problems. In the opinion of the Board, Merlan has exercised good faith in trying to control its problems, and to penalize a company such as this would discourage all those who act in good faith to bring an end to their pollution problems. It is certainly the policy of this Board not to penalize those who are honestly trying, which is certainly the case here.

This opinion of the Board shall constitute its findings of fact and conclusions of law.

O R D E R

Upon consideration of the evidence and exhibits in this case, Merlan is hereby ordered as follows:

1. Merlan shall cease and desist operating its plant in violation of Section 9(a) of the Act in allowing the emission of dust, odor and smoke into the atmosphere in such quantities so as to unreasonably interfere with the life and enjoyment of property of the neighbors of the plant.
2. Merlan shall install or construct the following which are more adequately described in the record:
  - a. The cyclone system described by Dr. Mijo Matkovic shall be installed by January 15, 1972.
  - b. The grizzly shall be lowered and the conveyor system enclosed, as described in the record, by October 15, 1971.
3. Merlan shall continue the careful material handling techniques such as lower stockpiles, which techniques have already been instituted by Merlan to reduce the possibility of spontaneous fires and dust emissions.
4. Merlan shall within 45 days after the date of this order file a written report with the Board and the Agency, which report shall detail alternative systems, which are technically feasible, for the reduction, or elimination, of dust emissions from the unloading of railroad cars and storage of the stockpiles. This report shall include, inter alia, a detail of alternative programs, if available, the costs of those programs, and the time for completion for each of them. The Agency shall file a report with the Board and Merlan within 15 days after receipt of the Merlan report giving the Board and Merlan the Agency's recommendation on the programs detailed by Merlan. The Board shall review the reports and make such further order as it shall deem necessary.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order on the 16 day of September, 1971.

  
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