

ILLINOIS POLLUTION CONTROL BOARD
November 6, 1986

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 86-102
)
EKCO PRODUCTS, INC., an)
Illinois corporation,)
)
Respondent.)

MS. NANCY J. RICH, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. DANIEL ADAMS APPEARED FOR THE VILLAGE OF WHEELING.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a Complaint filed by the Illinois Environmental Protection Agency ("Agency") on July 11, 1986. Hearing was held in this docket on September 25, 1986, in Wheeling, Illinois. At that time, counsel for the Agency indicated that the Agency and Ekco Products, Inc. ("EPI") had entered into a settlement agreement. That document, entitled, "Stipulation of Facts and Proposed Settlement", was entered into the record at hearing as Exhibit 1*. A signed copy of the settlement agreement was filed on November 3, 1986.

EPI is an Illinois corporation engaged in the business of manufacturing aluminum foil containers and plastic containers. The EPI plant is located on Wheeling Road in Wheeling, Illinois, which is within Cook County. The plant produces approximately 695 million foil containers per year.

Operations performed at the EPI plant included the coating or painting of aluminum coils with solid colors or patterns. The machine which performed this operation is called a printer-coater unit ("P&C"). EPI operated a P&C at its plant until January 1, 1986 (Ex. 1, par. 4).

*This will be identified as "Ex. 1"; references made to this document will refer to its paragraphs (abbreviated "par.") by number.

After a color or print is applied to an aluminum coil, the coil is passed through a gas fired oven for drying and curing. During drying operations, EPI's P&C emitted non-chlorinated organic solvents as wastes. These wastes constituted volatile organic material ("VOM"), as that term is defined at 35 Ill. Adm. Code 211.122 (Id., par. 6). EPI's P&C did not utilize an air pollution control device (Id., par. 4).

EPI operated its P&C under an Agency operating permit issued on November 15, 1979, until that permit expired on October 25, 1984. On June 25, 1984, the Agency notified EPI that VOM emissions from the P&C would not comply with 35 Ill. Adm. Code 215.204(3). EPI continued to operate the P&C, without an Agency operating permit, until January 1, 1986 (Id., par. 8).

The Agency, in its July 11, 1986, Complaint, alleges that EPI violated two sections of the Environmental Protection Act ("Act") through its operation of the P&C. Count I alleges that EPI violated Section 9(a) of the Act from June 15, 1984, to January 1, 1986, by "causing or threatening or allowing the discharge or emissions of contaminants...into the environment so as to cause or tend to cause air pollution". Count II alleges that EPI violated Section 9(b) of the Act from October 24, 1984, until the date the Complaint was filed by "operating their P&C, which is capable of causing or contributing to air pollution, without a permit granted by the (Agency)".

The proposed settlement agreement contains an admission by EPI that it violated Section 9(b) of the Act from October 25, 1984, to January 1, 1986, the date on which it discontinued use of the P&C (Id., 1, pars. 13, 12). As part of the proposed settlement, the Agency has withdrawn the alleged Section 9(a) violation contained in Count 1 of the Complaint (Id., par. 10).

The parties further stipulate that EPI will cease and desist from further operation of the P&C until the appropriate methods of compliance are in place and the appropriate permits have been obtained (Id., par. A); that the Agency may inspect the EPI premises to, within its authority, encourage compliance with the Act and the regulations promulgated thereunder (Id., par. B); and that EPI shall pay, within 30 days of the Board Order accepting the settlement agreement, a penalty of \$3,000.00 to the Illinois Environmental Protection Trust fund (Id., par. C). The parties agree that such a penalty is necessary to promote enforcement of the Act (Id.).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board moreover finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the settlement agreement is accepted in toto by the Board, and the Board will integrate the elements of the settlement agreement into the following Order.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. As of January 1, 1986, EPI will cease and desist from further violation of the Act by ceasing operation of the P&C. EPI will not reactivate its P&C until it has the appropriate methods of compliance in place and has obtained the appropriate permits.
2. The Agency may inspect the EPI premises, at any reasonable time, and do whatever is necessary within its statutory and regulatory authority to encourage compliance with the Act and the rules and regulations promulgated thereunder.
3. EPI shall pay a civil penalty of \$3,000.00. The penalty shall be paid within thirty (30) days of this Order of the Board. Payment shall be made by certified check or money order payable to the Environmental Protection Trust Fund and delivered to:

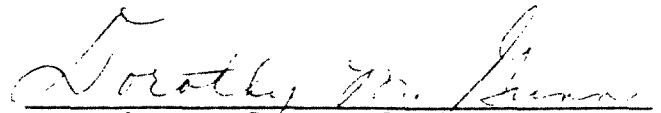
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706
ATTN: Mary Jo Heise

4. EPI shall comply with all the terms and conditions of the "Stipulation of Facts and Proposed Settlement" filed on November 3, 1986, which is attached and incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 6th day of November, 1986, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
vs.)
)
EKCO PRODUCTS, INC., an)
Illinois Corporation,)
)
Respondent.)

NOV 03 1986

PCB 86-102

STIPULATION OF FACTS AND PROPOSED SETTLEMENT

Complainant, the Illinois Environmental Protection Agency, by Neil F. Hartigan, Attorney General of Illinois, and Respondent, Ekco Products, Inc., by their attorney John Olsen, submit the following Stipulation of Facts and Proposed Settlement to the Pollution Control Board (Board), pursuant to Procedural Rule 103.180.

I. BACKGROUND

1. Complainant Illinois Environmental Protection Agency (Agency) is an agency of the State of Illinois, created pursuant to the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111-1/2, pars. 1001 et seq. (Act), charged with the duties of enforcing the Act.

2. Respondent Ekco Products, Inc., (EPI) is an Illinois corporation engaged in the business of manufacturing aluminum foil containers, and plastic containers. The EPI manufacturing operation (plant) is located at 777 Wheeling Road, Cook County, Wheeling, Illinois.

3. EPI is the leading producer of aluminum foil containers with approximately 40 per cent of the U.S. market. The plant produces approximately 695 million foil containers. Aluminum containers are made from aluminum coils

4. The coating or printing of aluminum coils with solid colors or patterns was performed at the plant by a machine identified as a printer-coater unit (P & C) until January 1, 1986 when the P & C operation was discontinued. The P & C did not have an air pollution control device.

5. After a color or a print is applied to an aluminum coil, the aluminum coil is passed through a gas fired oven for drying and curing.

6. The non-chlorinated organic solvents are emitted by EPI's P & C as waste during the drying phase of the operation that is explained in paragraphs 4 and 5, are volatile organic material (VOM) as the term is defined in 35 Ill. Adm. Code Section 211.122.

6.1 On June 15, 1984 the Agency notified EPI that VOM emissions from the P & C would not comply with 35 Ill. Adm. Code Section 215.204(d).

7. On July 29, 1985, EPI filed a petition for variance to allow the emission stated in paragraph 6 to continue until December 31, 1985. This was to give EPI time to install a catalytic incinerator.

II. FACTS RELATING TO THIS LITIGATION

8. EPI was issued an operating permit covering the P & C operation on November 15, 1979. This permit expired on October 25, 1984. EPI was operating their P & C without an Agency operating permit from October 25, 1984 to January 1, 1986.

9. The operation of EPI's P & C as described in paragraphs 4, 5, and 6 continued from October 25, 1984 to January 1, 1986.

10. The Agency alleges that from October 25, 1984 to January 1, 1986 EPI violated Section 9(a) of the Act, Ill. Rev. Stat., ch. 111-1/2, par. 1009(a) by causing or threatening or allowing the discharge or emissions of contaminant as stated in paragraph 6, into the environment so as to cause or tend to cause air pollution. As part of this settlement, the Agency has withdrawn the alleged Section 9(a) violation.

11. From October 25, 1984 to January 1, 1986 EPI was in violation of Section 9(b) of the Act, Ill. Rev. Stat., ch. 111-1, 2, par. 1009(b), by operating their P & C which is capable of causing or contributing to air pollution without a permit granted by the Agency.

12. On January 1, 1986, EPI discontinued use of their P & C. Since that time the P & C has no longer been operating, stopping the cause of the discharge of contaminants into the atmosphere.

12.1 On April 18, 1986, the Agency's Complaint against EPI was filed with the Board.

III. IMPACT OF VIOLATION AND COMPLIANCE

13. The Agency and EPI agree that the violation set forth in paragraph 11 above has occurred.

14. Prior to October 25, 1984 and thereafter, EPI understood from statements by Agency Staff that the Agency would deny its operating permit renewal application without a compliance plan for satisfying 35 Ill. Adm. Code 215.204(d). In an effort to establish a compliance plan, EPI studied during the nine months prior to April 19, 1985, various ways to comply, including coating reformulation, rescheduling P & C operation, ducting P & C emissions to the air pollution control device on another coater, and installing an incinerator on the P & C. EPI estimates that the total cost of consultants and employees time in connection with these studies was \$22,000. The studies showed incineration to be the only feasible means of compliance, and EPI notified the Agency on April 19, 1985, of its intention to apply for a variance to allow time for installation of the equipment. EPI management subsequently determined, based on the proposed \$150,000 incinerator cost, to shut down the P & C on December 31, 1985. Since October 25, 1984, the P & C has been operated at substantially reduced rates: 714 total running hours from November 1, 1984 through October 31, 1985, compared with 1,401 hours during the same period a year earlier.

15. The Agency and EPI agree that EPI's facility has social economic value in that it employs approximately 600 people and provides needed manufactured goods. The Agency and EPI further

agree in order to be of greatest economic and social value, EPI must cease operation of the P & C, after January 1, 1986.

NOW THEREFORE, the parties to this proceeding hereby stipulate and agree to the following compliance program.

A. EPI has violated Section 9(b) of the Act, Ill. Rev. Stat., ch. 11-1/2, par. 1009(b), in the manner and at the times described earlier. As of January 1, 1986, EPI will cease and desist from further violation of the Act by ceasing operation of the P & C. EPI will not reactivate its P & C until they have the appropriate methods of compliance in place and have obtained the appropriate permits.

B. The Agency is authorized to inspect EPI premises, at any reasonable time, and to do whatever is necessary within the statutory and regulatory authority to encourage compliance with the Act and the rules and regulations promulgated.

C. EPI shall pay a civil penalty of \$3,000.00. The parties agree that a penalty in this case is necessary to promote enforcement of the Act.

The penalty shall be paid within thirty (30) days of the order of the Board accepting this stipulation. Payment shall be made by certified check or money order payable to the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706
ATTN: Mary Jo Heise

D. This Agreement, when accepted by the Pollution Control Board shall be binding on all signatories and their successors

and assigns, and shall constitute a final disposition of all matters set forth in the Agency's Complaint against EPI.

E. This proposal is submitted to the Board for approval under Section 103.180 as one integral package, and the parties respectfully request the Board to enter its final order approving the entire settlement. All admissions and statements made herein are void before any Judicial or Administrative body if the foregoing settlement agreed to by the parties is not approved by the Board. If the Board should reject any portion thereof, the entire Settlement and Stipulation shall be terminated and be without legal effect, and the parties shall be restored to their prior position in this litigation as if no Settlement and Stipulation had been executed, without prejudice to any parties' position as to any issue or defense.

Date: 10/24/86

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Joseph E. Doherty

Date: 10/31/86

EKCO PRODUCTS, INC.

By: John R. Olsen