

ILLINOIS POLLUTION CONTROL BOARD

May 29, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-209
)
 MONSANTO CHEMICAL COMPANY,)
)
 Respondent.)

Frederick C. Hopper, Assistant Attorney General for the EPA
Randall Robertson and Phocian Park, Attorneys for Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Henss):

The Environmental Protection Agency charged Monsanto Chemical Company with emitting dense smoke, particulate matter and odors into the atmosphere so as to cause air pollution in violation of Section 9(a) of the Environmental Protection Act and Rule 3-3.122 of the Rules and Regulations Governing the Control of Air Pollution. The Complaint alleges that Monsanto has allowed these emissions at its chemical plant located near Sauget, Illinois "since July 1, 1970" and in particular on 12 dates which are specified in the Complaint.

Our Opinion and Order of November 28, 1972 disposed of all odor complaints except those occurring on: August 4, 1970, November 14, 1970, April 29, 1971, January 9, 1972, May 15, 1972, September 5, 1972 and September 21, 1972. The case was remanded to the Hearing Officer so that Respondent could have an opportunity to rebut testimony regarding odors allegedly occurring on the latter six dates.

Our November 28, 1972 Opinion also left open the possibility of finding a violation of Rule 3-3.122 if supported by exhibits which had been introduced into evidence but had been omitted from the record which was forwarded to us. Rule 3-3.122 prohibits smoke emissions which are of No. 2 Ringelmann density or darker. From the record available to us in November 1972 we were not able to conclude that Respondent had emitted smoke of the prohibited density for a time greater than six minutes. We understood, however, that this information might be available in the missing exhibit.

The Hearing Officer attempted to schedule this matter for introduction of Respondent's rebuttal evidence, but finally reported that "after a good deal of telephone conversations between the parties, the Respondent determined that it did not wish to present further evidence and will stand on the record". This was later confirmed by Respondent in a letter dated January 29, 1974. Therefore, the Board shall make its findings of fact from the original material presented plus the exhibits which were subsequently located and submitted to the Board.

It was alleged that Respondent had emitted smoke the density of No. 2 Ringelmann or darker on July 20, 1970, January 5, 1971 and September 5, 1971. The only evidence relative to a Ringelmann violation on the first date was a memorandum from Agency Inspector Telford which stated: "On July 20, 1970 from 2:28 p.m. to 3:38 p.m. the #9 (east chain grate) boiler average emission was the shade of the #3 Ringelmann". As noted in our prior Opinion a mere declaration that the "average emission" exceeded #2 Ringelmann is not sufficient to prove a violation. There is simply no way to determine from the exhibit (Agency Exhibit #1) whether part of the boiler emissions were less than #2 Ringelmann on July 20, 1970.

Agency Exhibit #2, a form for recording Ringelmann observations, shows that smoke emissions from #9 boiler ranged from #2 Ringelmann to #3 Ringelmann for a ten minute period on January 5, 1971, except for a single reading at the 7 minute 30 second interval when the observer's view was blocked by steam. Respondent's Utility Superintendent testified from company records that there was no breakdown or mechanical upset on boiler #9 on January 5, 1971 (R. 119). This evidence proves a violation of Rule 3-3.122 for the date in question.

Agency Exhibit #3 is another set of Ringelmann readings made by Telford on September 15, 1971. On that date the readings varied from 2.5 to 2.75 Ringelmann for the time period 10:52 a.m. to 10:58 a.m. Six minutes of consecutive readings above #2 Ringelmann are shown. However, Rule 3-3.310 provides for a six minute exception while blowing accumulated soot from the boiler. Therefore, no violation is shown for September 15, 1971.

Testimony by Telford relating to odors and fumes--usually chlorine gas--was discussed in our earlier Opinion. The EPA had alleged 9 specific dates on which Monsanto had caused odorous emissions in violation of Section 9(a) of the Act. During the hearing, the Agency dropped the charges for two dates in 1970. Of the remaining seven dates, the Board concluded that evidence of possible violation was shown for only one date, August 4, 1970. A decision regarding that possible violation was withheld since the case was being remanded to the Hearing Officer.

The record shows that on August 4, 1970 Telford and another Agency employee were on Route 3, west of the Monsanto plant, when they detected a "very strong chlorine odor". Telford could not recall if they left the car and walked around or just stayed in the car. He did recall that they both experienced an eye irritation and raw throat. The witness did not testify as to wind direction on August 4, 1970 but we conclude from the entire record--the proof that Monsanto was emitting the same odor on other dates, and the absence of any evidence of chlorine emissions from another source--that the odor originated at the Monsanto plant. The odor was of an intensity to come within the definition of air pollution. We find a 9(a) violation on August 4, 1970.

During the public hearing Monsanto objected to the testimony of employees of Sterling Steel Company, a neighboring factory, regarding odors on 6 dates which had not been specified by the EPA. The Hearing Officer correctly allowed the testimony to enter the record, but we decided to allow Monsanto an additional hearing so that it could rebut this citizen testimony. Monsanto chose not to introduce rebuttal evidence but again objected to the testimony from employees of Sterling Steel Company. Respondent said it "does not now recognize, nor does it acquiesce in, the validity of any of said testimony of the complaints contained therein as the proper subject matter of the proceeding in this docket."

This objection is denied. Section 32 of the Environmental Protection Act provides that enforcement hearings shall be open to the public and that any written statements or oral testimony may be presented. Dates and occurrences testified to by Sterling employees are generally within the time period alleged in the Agency Complaint. Further, Monsanto was provided ample opportunity to rebut the testimony and cannot claim surprise.

Testimony by William J. Shive, President and Treasurer of Sterling Steel Casting Company, indicates that operations at the Sterling plant have been occasionally affected by odorous emissions from Monsanto since November 14, 1970. On that date Shive smelled an "obnoxious" gas that caused him no ill effects but which caused him to send a letter to the Monsanto Plant Manager (R. 74). On April 29, 1971 Shive detected a "gassy emission that was obnoxious" at the plant. The following day he sent another letter to Monsanto.

On January 9, 1972 at 2:00 p.m. Shive detected a chlorine odor that caused him to stop working. Shive recalled that at least one other employee also stopped working on that date.

Sterling's personnel manager, Harvey L. Farthing, testified that he had called the Monsanto plant at 8:05 a.m. on September 21, 1972. He informed "a girl in Mr. Buckley's office" that the "fumes were driving our men out of the plant" (R. 91). Buckley allegedly returned the call at 8:20 a.m. informing Farthing that he had found the source of the trouble and that there would be no more trouble (R. 90). Farthing testified that the fumes on that date forced the shutdown of a furnace at Sterling since the four men operating the furnace stopped working (R. 91, 92). The fume, which he described as "like ammonia" did not have any effect on him personally.

Farthing also called Monsanto on September 5, 1972 to complain about the "strong fumes". Within 10 minutes of his call the fumes had cleared up (R. 94).

Farthing testified that on one other occasion a strong chlorine odor from the Monsanto plant caused Sterling employees to run out of the plant (R. 98). About 145 employees left the plant at 1:25 p.m. and did not return until 2:00 p.m., about 10 minutes after Mr. Buckley had called to report that the gas had been found and had been taken care of (R. 100). There is nothing in the record to show the date when this occurred.

Farthing also recalled a chlorine odor on May 17, 1972 which did not stop production and which did not cause him ill effects (R. 103). He added that on one of the occasions to which he had testified, the chlorine caused "a burning sensation in my nose and throat" (R. 104).

In defense, Monsanto offered the testimony of dry chlorine manufacturing supervisor, Mr. Regula. Regula described a \$300,000 program which Monsanto has initiated for upgrading pollution control in the dry bleach operation. This program includes detailed instructions for operators to follow when an emission is detected from the dust collection equipment, an improved air compressor for cleaning of the dust collection equipment, modification in the dust collection duct work, a limitation on the amount of air passing through the dry bleach dryers and dust collectors, and an automated packaging system which includes improved dust collection equipment.

Regula testified that an upset condition in the dry bleach manufacturing equipment has caused the release of chlorine but did not reveal any dates when such upsets had occurred.

We believe the record in this case is sufficient to show that Monsanto has caused air pollution by its periodic releases of chlorine gas. The record shows that these chlorine emissions have disrupted manufacturing operations at the Sterling Steel

Casting plant. These disruptions have apparently been few in number and Monsanto officials have reacted promptly to control the emissions when notified. While this does not in any way change the fact that Monsanto has caused air pollution, it will be considered in mitigation of penalty. The Board further notes that Monsanto has taken measures to insure that violations caused by emissions from #9 boiler and the dry bleach manufacturing plant do not occur in the future. The facts of this case justify a \$2,000 penalty.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Monsanto Chemical Company shall pay to the State of Illinois by July 15, 1974 the sum of \$2,000 as a penalty for its violations of Section 9(a) of the Environmental Protection Act and Rule 3-3.122 of the Rules and Regulations Governing the Control of Air Pollution. Payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
2. Respondent shall cease and desist from causing air pollution in violation of the Environmental Protection Act and the Regulations of the Pollution Control Board. Respondent shall file monthly reports with the Environmental Protection Agency stating the control measures taken by Respondent to bring its operation into compliance with the Act and the Regulations. The compliance reports shall begin on July 15 and shall continue for one year.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 29th day of May, 1974 by a vote of 5 to 0.

Christan L. Moffett