

ILLINOIS POLLUTION CONTROL BOARD  
October 14, 1971

LLOYD A. FRY ROOFING COMPANY )  
 )  
 ) #71-4  
 v. )  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )  
  
REV. LOUIS HEMMERICH, ET AL )  
 )  
 ) #71-33  
 v. )  
 ) CONSOLIDATED  
 LLOYD A. FRY ROOFING COMPANY )

BURTON Y. WEITZENFELD AND PAUL LEEDS, ATTORNEYS FOR LLOYD A. FRY  
ROOFING COMPANY, PETITIONER AND RESPONDENT  
PATRICK A. KEENAN AND DENNIS GROSS, FOR REV. LOUIS HEMMERICH, ET AL,  
COMPLAINANT  
JOHN McCREERY AND FRED PRILLAMAN, ATTORNEYS FOR ENVIRONMENTAL  
PROTECTION AGENCY  
JAMES RUBIN, ASSISTANT ATTORNEY GENERAL  
PETER C. ALEXANDER, ATTORNEY FOR THE COUNTY OF COOK

OPINION OF THE BOARD (BY MR. LAWTON):

Petition for variance from the particulate regulations of the Rules and Regulations Governing the Control of Air Pollution was filed by Lloyd A. Fry Roofing Company (Fry), received by the Board on January 20, 1971. The petition describes the nature of the company's manufacturing process and the general nature of its emissions alleged to be at a rate of nine pounds per hour. The variance requests continuance of particulate emissions in excess of regulation limits for a period of "at least six months awaiting the determination of the route of the new south-west expressway, plus the twenty weeks time to fabricate and install the air pollution systems." The substance of the request is that petitioner fears the routing of the expressway might require acquisition of its property and that petitioner does not want to incur the cost of abatement equipment installation unless the continuity of its operation at its present location is assured. The Board authorized hearing on this petition. On

February 21, 1971, a citizen's complaint was filed with the Board by Louis Hemmerich and four other individuals, all members of SORE (Save Our Resources and Environment), against Fry alleging:

"that Respondent Fry did, on February 17, 1971, cause and allow the discharge and emission into the environment of contaminants so as to cause or tend to cause air pollution in Illinois, and further that Respondent Fry has engaged and continues to engage in a pattern of conduct such as to cause and allow the discharge and emission into the environment of contaminants so as to cause or tend to cause air pollution in Illinois."

Hearing was authorized on this complaint by which order of the Board was consolidated with Fry's variance petition for purposes of hearing.

At the initial hearing on the consolidated petition and complaint, Fry declined to introduce evidence in support of its variance petition but stated, through its counsel, "that the plans [for construction and installation of emission control equipment] will be off the drawing board and the company is going to proceed and that is what is in the record as far as Fry is concerned as far as the proceedings are concerned". (R.18). No details of this program, either as to the nature of the abatement equipment proposed to be installed or the time schedule for its installation appear on the record nor does any motion appear to have been made by Fry to withdraw its variance petition. On this state of the record, the Board has no alternative but to deny the variance as petitioner has failed to establish the statutory requisites for its allowance. Section 35, Environmental Protection Act.

IT IS THE ORDER of the Board that the petition for variance filed by Lloyd A. Fry Roofing Company be and the same is hereby denied.

The record of the proceeding, concluded on August 12, 1971 after six hearings, the transcript of which contains 906 pages, clearly establishes that Fry has caused air pollution as defined in the Environmental Protection Act, Section 3(b) and has violated Section 9(a) of the Act, has emitted particulates into the atmosphere in an amount exceeding the limits set forth in the Rules and Regulations Governing the Control of Air Pollution, Section 3-3.111, which violations have continued since 1968 and are inherent in its daily operation, and has failed to file a letter of intent and an

Air Contaminant Emission Reduction Program (Acerp) as required by the regulations, Sections 2-2.3 and 2-3.4.

Fry is ordered to cease and desist the emissions of particulates into the atmosphere in violation of the Environmental Protection Act and the Rules and Regulations Governing the Control of Air Pollution. Penalty is assessed against Fry in the amount of \$50,000.00 for the violations aforesaid. Further hearing will be held in this matter as hereinafter provided.

Lloyd A. Fry Roofing Company is one of the world's largest manufacturers of asphalt roofing, operating 24 plants in various parts of the United States. The facility involved in the present proceeding is located in Summit, Illinois, where it has been engaged in production of asphalt roofing and allied products for many years. The Vollney Felt Mill appears to be a subsidiary or division of Fry and occupies the same premises, supplying the felt used in the operation. The Trumbull Asphalt Company, while purportedly being a separate entity in no way connected with Fry, is located contiguous to the Fry plant in Summit as it is in other parts of the country where Fry plants are located, and supplies the asphalt used in Fry's manufacturing process.

The recommendation of the Environmental Protection Agency filed in the variance proceeding, describes the manufacturing process. Since nothing has been introduced to refute these allegations, these statements will be accepted as true. Lloyd A. Fry, Jr. did testify to certain aspects of the operation which testimony appears consistent with the Agency's assertion. The manufacturing process may be briefly described as follows:

Woodchips are converted into fine wood flour which is combined with rags and cardboard scraps and placed in water-bearing tanks where a slurry is formed. The slurry, in turn, is processed through mashers after which the slurry is pumped into chests where specific thicknesses of the solid material are removed by a belt. This product constitutes the wet felt which is further processed through a battery of steam-heated drying rollers. After drying, the felt is processed through an asphalt saturator where the heated asphalt is absorbed by the felt. Coating is then applied and colored granules added. The finished product is then cooled, cut into shingles or wound in rolls. Approximately 4.7 tons of asphalt are consumed in the process. The Agency alleges that 165,000 gallons of #5 fuel oil of 1.5% sulphur content are consumed annually, and that 530 pounds of particulates and 106 pounds of SO<sup>2</sup> are emitted daily, resulting in emissions of 63.6 tons of particulates and 12.7 tons of SO<sup>2</sup> annually. The principal sources of emissions causing air pollution are the saturators. There is no control device of any sort located on the stacks connected with these units. No

Air Contaminant Emission Reduction Program was ever submitted to the Air Pollution Control Board although Fry has been in constant operation at its present location since prior to 1967 when this requirement was enacted as a regulation of the Air Pollution Control Board.

On June 20, 1968, C. W. Klassen, Technical Secretary of the Illinois Air Pollution Control Board wrote (Environmental Protection Agency Exhibit #2) to Francis Nelson, Chief Engineer of Fry, as follows:

"Dear Mr. Nelson:

This is to confirm the conversation between you and our Engineer, Mr. William Zenisek, during his visit to your Plant on June 11, 1968.

The information which you furnished on the Asphalt Saturators has been reviewed with the following conclusions:

1. Process Weight Rate 6250 lbs/hour (Saturant)
  2. Allowable Emission Rate 8.8 lbs/hour
  3. Estimated Emission Rate 65 lbs/hour
- "Compilation of Air Pollutant Emission Factors."  
(U.S. Public Health Service Publication #99-AP-42,  
page 33.)

Since the estimated emission rate exceeds the allowable emission rate, an Air Contaminant Emission Reduction Program must be filed for this source operation in compliance with the State Regulations, as soon as possible, as the due date for these programs was April 15, 1968.

We shall appreciate learning of your plans in this matter. If our Technical Staff can assist you, please feel free to contact us."

No Air Contaminant Emission Reduction Program was ever submitted by Fry to the Air Pollution Control Board or to this Board. Violation of this requirement is manifest. Likewise, particulate emissions in excess of those allowable based on the process weight are clearly demonstrated by the record. While the estimated emissions are 65 pounds per hour (R.719,753-60), it should be noted that the Environmental Protection Agency Exhibit #3, show emission rates ranging from 20 to 70 pounds per hour. However, even assuming the lowest figure, it is evident that Fry's emissions would be two and one-half times those permitted by the regulations. We have held (EPA v. Lindgren Foundry Co., #70-1) that standard emission factors may be used as a basis for determining violation in the absence of an affirmative showing that the specific pollution source

involved or the circumstances relating to its operation are such as to make it substantially different from the elements considered in the standard emission factor computation. (See EPA v. Norfolk & Western Railway, #70-41). The record in this case contains no evidence to call for a distinction, and, accordingly, we are justified in placing reliance on these figures. (See EPA Exhibit #1, Page 33.)

Even using the figures contained in the Air Pollution Engineering Manual, EPA Exhibit #3, showing a range of 20 to 70 pounds per hour (P. 378), a violation is clearly demonstrated. From the foregoing, it is evident that Fry has violated the regulations in its failure to file an Air Contaminant Emission Reduction Program and in failing to abate the emissions generated by its saturators, which are demonstrably in excess of the allowable emission limits of 8.8 pounds per hour. Fry operates today as it did in 1968 when these circumstances were originally brought to its attention. While the failure to file an Acerp and the continuation of unabated emissions in violation of the relevant regulations would be sufficient basis for imposing a substantial fine, it is also necessary to ascertain whether Fry's operation constitutes air pollution as defined in the statute.

In order to make such finding, it is necessary to go beyond the technical violation implicit in exceeding regulatory numbers and make a determination of whether Fry's operation substantially interfered with the enjoyment of life and property in the community. The record amply supports such finding. The record is replete with testimony by witnesses residing in the community who have suffered as a consequence of Fry's continuing indifference to their well-being.

Numerous witnesses testified to having observed heavy smoke emanating from Fry's stacks and at the same time, being acutely aware of the odors caused by these emissions. Witnesses testified to the unique nature of the asphalt odor and indicated their capability of distinguishing this particular smell from those caused by the sludge ponds of the Sanitary District, emissions from the Corn Products facility and odors characteristic of Diesel truck exhaust. The observations were frequent during the years 1970 and 1971, both up to and during the period of the trial. The emissions caused headache, nausea, burning to the eyes, nose and throat, coughing, upset stomach, and in many instances, foreclosed outdoor activities. Typical is the statement of James S. Johnston, (R.189). The smoke and odor "makes you sick...it makes your eyes water, parches your throat and you get sick from it." Observations were made by this witness during September and October, 1970 on four occasions, and four dates during 1971. Mary Younker testified to having observed emissions over a period of one-half year and stated that the odors

filled her home and gave her headaches and nausea. She made observations on at least three occasions in 1970 and nine occasions in 1971.

Affidavits were introduced into evidence by the members of SORE, which further confirmed the severe burden Fry's operation has imposed on the neighborhood. In addition to the specific February 17, 1971 date set forth in the complaint, numerous other dates of observation and nuisance are observed. These affidavits were the subject of intensive cross-examination by Fry's counsel and all affiants were present at the hearing. We find no error in the admission of these affidavits, and feel that the testimony of these witnesses, both written and oral, amply support a finding of severe nuisance and air pollution as defined in the statute.

In addition to the personal distress created by Fry's operation, these witnesses testified to the inability to conduct Little League baseball and football in contiguous areas as a consequence of Fry's emissions. Typical of the affidavits is that of Katherine B. Massa:

"She was, on Wednesday, February 17, 1971, at Walsh School, one block north of Fry Roofing on Archer Road, and observed the following:

The temperature was 20-30° and the sky was partly cloudy. The wind was from the southwest.

Gray smoke was coming from the stacks on Fry Roofing Co. as pictured in Complainants' Exhibit No. 10.

The odor of the smoke was exceptionally noxious, a heavy, tarry smell. The smoke and odor affected her and caused her eyes to tear and sting and caused her throat to burn. She felt she would gag because of the sick feeling in her stomach.

She can recognize the smell of exhaust from diesel operated trucks, the odor emitted from Corn Products Corporation, and the odors from the sludge ponds and Sanitary District plant, all of which are different and distinct from the characteristic obnoxious odor of Fry Roofing.

She was again in the vicinity of Fry Roofing on Wednesday, February 24, 1971, at approximately 10:00 A.M., and 2:00 P. M. at which times she observed the following:

The wind was from the south.

Odor and smoke, of the same description as in paragraph 3.b. and 3.c. above were coming from the Fry plant.

On Wednesday March 24, 1971, at 10:00 A.M. and 2:00 P. M. and on March 25, 1971, at 10:00 A.M. and 2:00 P.M. she again saw smoke and smelled odor of the same description as that described in paragraphs 3.b and 3.c above.

On Friday, April 16, 1971, she was in the vicinity of Summit Park, which is immediately north of and adjoining the Fry Co. property, and observed the following:

Smoke was coming out of the stacks located on the Fry building, pictured in Complainants' Exhibit No. 10.

The smoke had the characteristic Fry odor.

When she walked into the park, she was enveloped in the smoke, as if by fog, which covered the entire basin of the park area.

She experienced the following physical effects: She was sickened, her stomach was turned, she had to cough, her eyes and throat burned, and she was forced to leave the park."

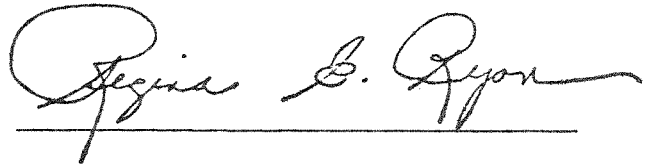
On the state of the record, it is abundantly clear that Fry's operation during the years 1970 and 1971 and continuing down to the present, have caused a severe burden and nuisance on the community. Our order will direct Fry to cease its operation until its polluttional discharges have been abated so as to comply with the regulations. If Fry had pursued the program of emission control it represented it would follow at the first hearing in this case, it would now undoubtedly be in compliance with the regulations and the nuisance impact would be substantially lessened. The serious burden placed on the community by Fry's uncontrolled operation necessitates this course of action.

IT IS THE ORDER of the Pollution Control Board:

1. That Lloyd A. Fry Roofing Company cease and desist emissions from its Summit operation until such time as air pollution abatement equipment has been installed and is properly operating, which equipment shall bring Fry's emissions within the particulate regulations, as set forth in the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.11 and 3-3.111.

2. Fry shall advise this Board when such installation has been completed. This proceeding shall remain open and the Board shall conduct a further hearing not less than 30 nor more than 60 days after notice of the installation of said air pollution abatement equipment in order to ascertain whether odors being emitted by Fry's operation have been abated as a consequence of the air pollution control equipment installed. Such further orders shall be issued by this Board as are appropriate in consideration of the hearings.
3. Penalty in the amount of \$50,000.00 is assessed against Fry for violations of the particulate emissions provisions of the Rules and Regulations Governing the Control of Air Pollution, for failure to file a Letter of Intent and Air Contaminant Emission Reduction Program as required by the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.3 and 2-2.4, and for causing air pollution as defined within the Environmental Protection Act, Section 9.a.

I, Regina E. Ryan, Clerk of the Board, certify that the Pollution Control Board adopted the above Opinion this 14 day of October, 1971.

  
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