

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 1987

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 86-26  
 )  
FOREST ELECTRIC COMPANY, )  
 )  
Respondent. )

MR. GERALD KARR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;

MR. DENNIS KING, VICE PRESIDENT OF FOREST ELECTRIC, CO., APPEARED ON BEHALF OF COMPLAINANT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board on Complainant's February 25, 1986 one count complaint alleging Respondent was operating without a required operating permit. Complainant alleges violations of Ill. Rev. Stat. ch. 111 1/2, par. 1009(b), 1012(b) and 35 Ill. Adm. Code Section 201.141 and Section 201.144. After numerous continuances, hearing was held on October 7, 1987 at 1 N. LaSalle Street, Chicago, Illinois. No members of the public attended.

The facts as set forth at hearing, are as follows: Respondent has operated at 1001 N. 25th Avenue, Melrose Park, Il, since December of 1959. The nature of Respondent's business operations is designing and manufacturing power supplies and solid state devices, including specialty transformers and magnets. This involves assembly and fabrication in addition to painting and in curing ovens. The curing oven, as a source of emissions, is required to be permitted by IEPA. 35 Ill. Adm. Code Sections 201.102, 201.144. Respondent was issued its first operating permit on March 17, 1986 -- but this permit was retroactive to November 25, 1985. On February 26, 1986, prior to the actual, physical issuance of the permit, the Agency filed this complaint alleging Respondent operated unpermitted equipment in violation of law.

As a threshold matter it should be noted that there is conflicting evidence regarding the issuance of permits prior to November 25, 1985. Complainant called Ms. Corazon Mata as its only witness. Ms. Mata testified that she is an Environmental

Protection Engineer, assigned to the area which includes respondent's facility. She further testified that she checked the IEPA file in Maywood, microfiche files in Maywood, computer print-outs and she consulted the Permit Section (of IEPA) in Springfield prior to hearing. (R. 8). Ms. Mata stated that Respondent did not possess an operating permit for its curing oven. However -- and although Respondent never contested Ms. Mata's assertion -- Respondent introduced evidence indicating that the equipment used was previously permitted. In specific, Respondent's Exhibit 4 at Question #11b, a certified statement, states that equipment covered by the permit application has previously received an operating permit. The answer to Question #11b appears to be an error -- perhaps caused by the inartful phrasing of Question #11b. Nonetheless, Respondent never claimed to have a permit, nor did it introduce any evidence indicating the issuance of a permit. The Board finds that Complainant has substantiated its averments concerning Respondent's lack of a required operating permit until November 25, 1985.

Another threshold matter which will be addressed at this time is Complainant's allegations that Respondent's conduct constitutes a violation of Ill. Rev. Stat. ch. 111 1/2 par. 1012(b). (Complaint p. 3 par. 12). Respondent's activity, at least insofar as the proofs and evidence, is not a violation of Section 1012(b). Ill. Rev. Stat. ch. 111 1/2, par. 1012(b) concerns water pollution not air pollution. The proofs and evidence contain no evidence relative to a water pollution violation; therefore the Board finds no violation of water pollution rules or regulations.

The Board finds that Respondent violated Ill. Rev. Stat. ch. 111 1/2, par. 1009, 35 Ill. Adm. Code Sections 201.141 and 210.144. Section 9 of the Environmental Protection Act prohibits the operation of equipment capable of causing air pollution in the absence of a permit issued by IEPA. Respondent's curing oven, which dries painted power supplies and solid state devices, is a source of emissions as that term is defined at 35 Ill. Adm. Code Section 201.102. Hence, Respondent may not operate that equipment without a permit. Ill. Rev. Stat. 1985 ch. 111 1/2, par. 1009(b); 35 Ill. Adm. Code Section 201.144. Additionally, in this case, the discharge of air emissions in violation of Section 201.144 constitutes a violation of 35 Ill. Adm. Code Section 201.141. Respondent, by operating its curing oven without an IEPA permit has violated Ill. Rev. Stat. ch. 111 1/2, par. 1009(b) and 35 Ill. Adm. Code Sections 201.141, 201.144.

#### PENALTY

Ill. Rev. Stat. ch. 111 1/2, par. 1033(c) sets forth the elements for this Board to consider in reviewing actions of this sort. Par. 1033(c) elucidates the following criteria:

- "c. In making its ... determinations, the Board shall take into considering all facts and circumstances bearing upon the ... emissions ... but not limited to:
1. the character and degree of injury to or interference with the ... health, general welfare and physical property of the people;
  2. the social and economic value of the ... source;
  3. the suitability ... of the ... source ... including the question of propriety of location in the area involved.
  4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, ... from such pollution source.

Respondent's facility is not a 'major source' (emissions in excess of 100 tons/yr) as that term is defined at 35 Ill. Adm. Code Section 203.206; but that does not mean Respondent's facility and operations are innocuous. Varnish, lacquer, paint and paint thinner are all substances which can be harmful if not handled properly. Because IEPA never reviewed Respondent's handling of these substances nor Respondent's operations, the public health and welfare was less than secure. Additionally, because it was unaware of this emission source, IEPA, as the Agency charged with monitoring air quality and enforcing compliance with same, is hindered in its efforts to analyze regional air quality standards, causes of pollution and formulate possible solutions. Hence the public injury was both localized to the area surrounding Respondent's plant, and generalized to the entire community because a potential source of dangerous emissions was unknown to State officials.

There is no question that electrical transformers and solid state electrical equipment serve useful social and economic purposes. But this does not outweigh the need for Respondent to supply IEPA with data relative to air emissions; nor does this mitigate or eliminate Respondent's duty to obtain required permits. There is no direct evidence in the record relative to Respondent's social and economic value.

Likewise, there is no direct evidence regarding Respondent's suitability to the area in which it is located. Nonetheless, whatever the area in which Respondent is located, that area is better served by Respondent's compliance with Illinois law by providing IEPA with data relative to air emissions and by obtaining required permits.

Ill. Rev. Stat. ch. 111 1/2 par. 1033(c) contains another criteria which this Board is required to consider: "The

technical practicability and economic reasonableness of reducing or eliminating the emissions ...." "It should be noted that Respondent was not required to alter, modify or change its operations in order to obtain the required permit. Upon its submission of the required data and applications and receipt of a permit, Respondent may now 'legally' conduct its operations. Thus, since no control equipment is involved in this case and emissions are not required to be reduced there are no technical practicability or economic reasonableness factors applicable regarding this emission.

There are two more criteria by which this Board must judge Respondent's actions. The first is the degree of economic advantage enjoyed by Respondent by its failure to comply with the law. IEPA v. Standard Metal Co., PCB 83-22, decided January 10, 1985. The second [additional] criterion is whether or not the Respondent made good faith attempts to comply with the Act.

There is no evidence regarding any degree of economic advantage or cost savings enjoyed by Respondent from its failure to obtain the required permit and submit the necessary, required data. Thus it can be reasonably assumed that there was no such economic advantage. Unlike major equipment modifications, supplying required information and applying for required permits does not necessarily carry a discrete financial component. The Board finds that there was no unfair cost savings to Respondent from its failure to obtain the required permit.

The last criterion to be considered is whether the Respondent has made any good faith attempts at complying with the Act. The facts are clear that an inspection occurred on September 10, 1984, and that since September 18, 1984 Respondent has been aware of its obligation to obtain required permits. Regarding operations before September 18, 1984, Respondent's ignorance is neither a proper defense nor a mitigating factor. After September 18, 1984 Respondent continued to operate without permits until March 17, 1986 at which time it received a permit retroactive to November 26, 1985. The fact remains that it took Respondent in excess of one year to supply necessary information and apply for required permits. Statements by Mr. Dennis King, Vice President and General Manager, for Respondent, that "the IEPA ... never gave me a deadline by which these things had to be done" does not alter the fact that it took Respondent too long to comply with the law. (R. 27).

Mr. King indicated that the excessively long time between notification and permitting was due to his difficulties in completing application forms (R. 26). He further testified as follows: "... I don't think a layman can fill out this form for a drying oven." (R. 37). The Agency's witness, Ms. Cora Mata, nowever stated as follows". "... in fact, Forest Electric, they seemed to be coming to the Agency without no information [sic].

Nothing at all. I explained one by one how the forms worked, what the necessary information are [sic] required in order to complete those. Those informations [sic] that are required does [sic] not necessarily need a technical background. Anybody can fill those out." (R. 36).

The issue is not whether Mr. King has a technical background; or whether a layman could understand those forms; or whether the IEPA was 'helpful' enough to Mr. King. The duty is Respondent's to comply with Illinois law -- and Illinois law requires Respondent to submit sufficient data to demonstrate compliance and to obtain operating permits. Ill. Rev. Stat., ch. 111 1/2, par. 1039(a); 1009(b); 35 Ill. Adm. Code Section 201.144. The sole issue is whether or not Respondent was operating without required permits.

This Board finds that Respondent is required to possess an operating permit; this Board also finds that Respondent operated for at least 1 1/2 years prior to receiving that required permit. The Board assesses Respondent \$3,000 for failing to comply with the permitting requirements of the Act and Regulations.

Failure to obtain required permits is not a "paper violation" or a technicality. The violation of a permit requirement goes directly to the heart of the State's enforcement program and ability to protect against environmental damage. IEPA v. Standard Scrap Metal Company, PCB 83-22, decided January 10, 1985. Additionally, the permitting program is the principal method of informing owners and operators of pollution sources about what is required of them to comply with the regulations intended to prevent pollution.

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

#### ORDER

The Board finds Respondent Forest Electric Company in violation of Ill. Rev. Stat. ch 111 1/2 par. 1009(b) and 35 Ill. Adm. Code Sections 201.141, 201.144, in that it operated its curing oven without required permit[s] since at least September 10, 1984 until November 26, 1985 in violation of law.

The Board orders Respondent, Forest Electric Company to cease and desist from operating equipment which is required to be permitted -- but which is not currently permitted.

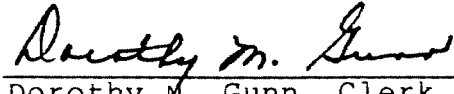
The Board further orders Respondent to pay, within 90 days of the date of this Order, a penalty in the amount of \$3,000 for the violations of the Act and Regulations as described in this Opinion and Order. Payment shall be by certified check or money order made payable to:

State of Illinois Fiscal Services  
Illinois Environmental Protection Agency  
2200 Churchill Rd.  
Springfield, IL 62706.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111-1/2, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19<sup>th</sup> day of November, 1987 by a vote of 7-0.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board