ILLINOIS POLLUTION CONTROL BOARD
JUNE 25, 1987

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 86-56
TRILLA STEEL DRUM CORPORATION, Respondent.	)	

MR. JOSEPH ANNUNZIO, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

MR. RICHARD COSBY, ATTORNEY AT LAW, APPEARED ON BEHALF OF TRILLA STEEL DRUM CORPORATION.

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

This matter comes before the Board upon an April 18, 1986, complaint filed on behalf of the Illinois Environmental Protection Agency (Agency) against Trilla Steel Drum Corporation (Trilla). The complaint contains allegations that Trilla operated without a permit from December 31, 1984 until the date of filing of the complaint and violated the volatile organic material (VOM) emission standards.* Hearings were held on July 21 and September 16, 1986 at which the parties, but no members of the public appeared. At hearing the parties entered into a stipulation of facts which constitutes the bulk of the evidence in this proceeding. The Agency's closing brief was filed on December 3, 1986 (cited as Brief at ___). Trilla responded on February 26, 1987 (cited as Response at ___), and the Agency replied on March 12, 1987 (cited as Reply at ___).

Trilla is an Illinois corporation engaged in the manufacture of 55 gallon steel drums at 2925 West 47th Street in Chicago. (Stip. Par. 3). As part of its operation coating is applied to both the interior and exterior of the drums, and VOM are emitted during the coating operation. (Stip. Par. 4).

In Count I of the complaint the Agency alleges that Trilla has violated Section 9(b) of the Illinois Environmental

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* In some quotations set forth in this opinion the term VOC is used which stands for volatile organic compounds. For purposes of this opinion VOC and VOM may be considered interchangable.

Protection Act (Act) and 35 Ill. Adm. Code 201.141 and 201.144 by operating without a permit since December 31, 1984. In Count II of the complaint the Agency alleges that Trilla's interior coating line has emitted VOM's in excess of 4.3 lbs./gal. in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 and 215.204(j).

In the Stipulation Trilla admits that it has operated without a permit "from January 1, 1985 to and including April 18, 1986." (Stip. Pars. 13 and 14). Thus, the Board finds that Trilla has violated Section 9(b) of the Act and 35 Ill. Adm. Code 201.141 and 215.204(j) during the relevant time period. The only issue remaining regarding Count I is the amount of any penalty to be imposed. The penalty will be discussed later.

Trilla also admits that its coating operations are regulated by Section 215.204(j) and that it was required to comply with the interior coating limit by December 31, 1983. (Stip. Pars. 4 and 5). It further admits that it did not file a petition for variance from that rule until January 16, 1986. (Stip. Par. 11). It does not, however, admit that it violated the Section 215.204(j) standard. Rather, Trilla contends that "it is clear that the Agency has failed to provide this Board with sufficient proof (or proof at all) that Trilla Steel Drum's interior coating line is in violation." (Response at 12). Furthermore, Trilla contends that stack testing and engineering analyses demonstrate that its interior coating lines are in compliance. (Stip. Par. 21).

The Agency asserts that it "has introduced calculations that show that the control efficiencies of Trilla's ovens (3.6% and 30.5%) are not high enough to demonstrate compliance with the interior coating limits of Section 215.204 (Stip. Exhibit 7)." (Brief at 6).* Exhibit 7 does show calculations of a control efficiency of 30.5% for interior coatings. Further, in the letter from the Agency to Mr. Trilla (which is also contained in Exhibit 7) the Agency states that "from the material balance calculations ... it appears that the control efficiencies which can be attributed to the ovens (3.6% and 30.5%) are not high enough to meet the calculated control efficiency required (37.8% to 45.4%) to demonstrate compliance." The Agency, apparently, would have the Board find this statement to be dispositive of the VOM issue. The Board cannot, however, reach that conclusion in

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* While the record is not clear, the Board believes that the 3.6% figure applies to exterior coatings and the 30.5% figure applies to interior coatings.

** Again, while the record is not clear it appears that the parenthetical expressions should read 37.8% and 45.4% with the 45.4% referring to interior coatings.

that the Board can find no support in the record of this proceeding for the conclusion that a control efficiency of "37.8% to 45.4% is required for compliance" beyond the bald assertion in the letter.** Unless the Board were to conclude, which it cannot, that Trilla has stipulated to the accuracy of the figures contained in that letter, it cannot find that Exhibit 7 proves a violation.

The only other bases for a finding of violation of Section 215.204 are contained in the Agency's Reply at pages 4-5. The Agency points out that Trilla has stipulated to the amount of paint it uses. (Stip. Ex. 3, Pars. 7-9). It then states that "since the Agency disputes Trilla's destruction efficiency calculations for the company's curing ovens, it logically concludes that Trilla emits all of the VOC's contained in the coating it applies." (Reply at 5). Finally, the Agency states that "the Board has found in a variance proceeding that the Agency properly used this formula to conclude that Trilla's VOC emissions from November, 1984 through October, 1985 were over 40 tons in excess of allowable limits. Trilla Steel Drum Corporation v. Illinois Environmental Protection Agency, PCB 86-9, (Opinion and Order, February 5, 1987). (Reply at 5).

Again, the Board does not agree. The burden is on the Agency to prove a violation, and it has not. Section 215.204(j)(1) prohibits the emission of VOM to exceed 4.3 lbs./gal. of coating materials delivered to the coating applicator. It does not prohibit the use of a coating material with a VOM content of greater than 4.3 lbs./gal. In order to bridge the gap from use to emissions, the Agency has in effect asked the Board to assume no destruction efficiency on the sole basis that it has disputed Trilla's destruction efficiency calculations. Contrary to the Agency's assertion, this does not follow logically. Even assuming that the Agency has adequately disproven Trilla's computations, all that logically follows is that the Board can make no finding regarding the destruction efficiency. Given that the burden is on the Agency to present proof of a violation, absent such finding, no violation can be found. Finally, the Board did not find in PCB 86-9 that Trilla's VOC emission's were 40 tons in excess of allowable limits. In that opinion the Board found that "Trilla has not presented enough information to show that ovens are effective in destroying VOC's." (Op. at 6). Furthermore, the Board went on to state that "this determination does not preclude Trilla from conducting further tests in order to show that the curing ovens provide a control efficiency such that Trilla is in compliance." (Id.) Simply put, the conclusion reached in PCB 86-9 was that Trilla had not proven compliance which is not inconsistent with the Board's finding here that the Agency has not proven non-compliance.

The Board finds that the Agency has not proven that Trilla has violated Section 215.204(j)(1), and since the alleged violations of Section 9(a) of the Environmental Protection Act and Section 201.141 are premised upon such violation, no violation can be found of those provisions.

The only question remaining is the penalty to be imposed for the permit violation found above. In that regard the Board must consider the factors set forth under Section 33(c) of the Act.

The first consideration under Section 33(c) is the extent of interference with the public health, welfare or property. In that regard, it is stipulated that Trilla's plant is located in Cook County which is designated as nonattainment for ozone. (Stip. Par. 40). Further, at the closest ozone monitoring stations there were four days of ozone excursions in 1983, one day in 1984 and none in 1985, and the Agency has stated that it is difficult to determine Trilla's contribution to these violations. (Stip. Par. 41). Thus, there have been no excursions during the period of Trilla's noncompliance, and the Board cannot conclude that there has been any significant interference with the public health, welfare, or property from Trilla's emissions.* On the other hand, the Agency correctly points out that the Board has long held that operation without a permit is a serious violation of the Act. (Reply at 3). As stated in Illinois Environmental Protection Agency v. George E. Hoffman & Sons, Inc., PCB 71-300, 12 PCB 413, 414 (May 29, 1974):

> We have often stated that enforcement of the permit provisions ... is essential to the environmental control system in Illinois. It is rare indeed when a permit violation does not call for at least some monetary penalty.

The permit system is the cornerstone of the State's environmental program. Through that system the Agency's ability to monitor compliance is greatly enhanced as, in turn, is the protection of the public. Any failure to comply with the permit requirement, therefore, interferes with the protection of the public.

The second consideration under Section 33(c) is the social and economic value of the source. There is nothing in the record of this proceeding regarding this consideration other than the

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* The Board notes that given the complex set of reactions that occur to produce ozone from VOC's and the transport that occurs while these reactions take place, the immediate environs of the source are probably of less concern than areas farther away where the ozone will more likly be formed. Thus, the lack of excursions locally is not a compelling demonstration of lack of harm.

fact that Trilla manufactures steel drums, which are presumably useful to those who purchase them, and employ's 50 people. However, the social value of the source is diminished when the source fails to operate in accordance with the law.

Third is the suitability of the location of the site. It is stipulated that Trilla is bounded on three sides by industrial facilities and on one side by a residential neighborhood. (Stip. Par. 3). Thus, the location of the facility appears to be generally suitable.

Finally, the Board must consider the economic reasonableness and technical feasibility of reducing the pollution. The record shows that Trilla has taken several steps to reduce its emissions, some of which have been successful. These include an ongoing search for compliance coatings, a program to increase the application efficiency, process modifications to recirculate exhaust air into the firebox of the oven to reduce VOC's and the investigation of add-on equipment. (Stip. Pars. 22-39). Furthermore, the stipulation cites the fact that as of December, 1983 USEPA knew of "no practical means of achieving compliance with interior coatings," and there is no indication that there has been any change in that position. (Stip. Par. 25).

While these considerations tend to be mitigating, they are not dispositive in determining an appropriate penalty for the failure to obtain an operating permit. These considerations are more directed toward violations of emission standards than permit requirements. For example, where, as here, it may be very expensive to come into compliance with the emission standards, that factor is not significantly mitigating regarding the failure to obtain a permit which is not dependent upon obtaining compliance. The appropriate mechanism is to obtain a variance from the emission standards and then to obtain the permit. Trilla is now going through that process in that a variance has been obtained and a permit application is pending. However, Trilla has been less than diligent in pursuing that course of action. Trilla had a permit which expired on December 31, 1984, but did not file for renewal until March 13, 1986, over 15 months later. It did not even file for variance until January 16, 1986. (Stip. Ex. 3). No reason whatsoever has been given for this delay. Instead, Trilla argues that no penalty is needed to aid in the enforcement of the Act and that it has made substantial efforts to attain compliance. (Response at 8-9).

Trilla is correct that the primary purpose of a penalty is to aid in the enforcement of the Act and not to punish. As noted above, however, there is a significant state interest in compliance with the permit requirement which is distinct from the interest of compliance with emission standards. While Trilla's efforts to achieve compliance with the emission standards are commendable, its lack of efforts for 15 months to take the steps

necessary to obtain a permit show willfulness or negligence by Trilla based on the record. The Board concludes that the permit requirement is not sufficient standing alone to assure compliance by Trilla and that some further incentive is necessary. The Board concludes that a penalty in the amount of $10,000 should provide that incentive. Furthermore, because of the importance of compliance with the permit requirement, the Board will order Trilla to cease and desist operation without a permit.

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

ORDER

1. Trilla Steel Drum Corporation is hereby found to be in violation of Section 9(b) of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 201.141 and 201.144. Within 45 days of the date of this Order Trilla shall pay a penalty in the amount of $10,000 which is to be sent to:

   Fiscal Services Division
   Illinois Environmental Protection Agency
   2200 Churchill Road
   Springfield, IL 62706

2. Trilla Steel Drum shall cease and desist from operating without a permit.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25th day of June, 1987 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board