

ILLINOIS POLLUTION CONTROL BOARD
August 14, 1986

VILLAGE OF ADDISON,)
)
 Complainant,)
)
 v.) PCB 84-161
)
 L & S INDUSTRIES, INC.,)
)
 Respondent.)

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

On September 5, 1985, the Board entered an Interim Opinion and Order, finding that L & S Industries, Inc. (LSI) had violated Sections 9 and 24 of the Environmental Protection Act. That Interim Order required LSI to prepare and submit a report on methods of reducing or eliminating noise and odor pollution. This report was due no later than December 1, 1985. However, no such report was filed and by order of March 14, 1986, the Board provided LSI one last opportunity to cure this defect. LSI was required to file with the Board and the complainant by May 1, 1986, a schedule for completion of the report on reducing odor and noise pollution at its facility which was to call for a complete and final report to be filed with the Board not later than July 1, 1986, detailing all reasonable methods of reducing odor and noise pollution, the type and degree of reductions possible with each method, its cost and the time required to implement the method. Neither the schedule nor the final report have been filed.

In its September 5, 1985, Opinion and Order, the Board stated that:

The record before the Board is presently inadequate for the Board to order any particular remedial actions. The last noise survey in the record is from May 19, 1982. LSI contends that operational changes since that time have significantly reduced the noise. While the record does contain sufficient evidence to conclude that noise violations continue, it does not contain sufficient information on the extent of present non-compliance nor does it offer any further specific actions which could be taken to assure compliance.

Nothing further has been entered into the record since that time and those statements remain true.

Pursuant to Section 31(c) of the Illinois Environmental Protection Act (Act), the burden is on the complainant to show that the respondent has caused or threatened a violation of the Act or the Board rules. If that is proven, the burden falls on the respondent to demonstrate that compliance would impose an arbitrary or unreasonable hardship. Where, as here, the complainant meets his burden and the respondent fails to meet his, the Board is to make "such final determination as it shall deem appropriate under the circumstances," pursuant to Section 33(a) of the Act. Pursuant to Section 33(b), "such order may include a direction to cease and desist."

Given the lack of sufficient information on which to base any particular remedial program, there is little option for the Board other than the imposition of a cease and desist order (in addition to the earlier ordered monetary penalty). Therefore, the only questions remaining are the scope of the cease and desist order and when it should become effective. Given that L & S Industries (LSI) had the opportunity to present evidence regarding the reasonableness of compliance at the original hearing in March of 1985 and was given the additional opportunity to present a compliance plan by December 1, 1985, which was later extended to July 1, 1986, the Board will not be liberal in its decision.

If the Board were simply to order LSI to cease and desist violations of the Act by a date certain, the failure to attain compliance would have to be relitigated to establish a continuing violation before further action could be ordered. Such delay would be highly inappropriate. Therefore, the Board must fashion its order in such a way that compliance with that order is quickly and easily determined. If the Board were able to order specific compliance actions within a definite time period, this dilemma would be solved. However, LSI's inaction has precluded such an order. Therefore, all that remains is for the Board to order that LSI cease operations at its plant. Such an order is highly unusual and, for that reason, the Board will offer LSI a second last opportunity to avoid this result by taking expeditious steps to comply with the Board's previous orders (albeit belatedly).

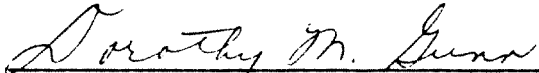
The Board, therefore, orders that LSI cease and desist all operations at its facility located at 920 National Avenue in Addison, Illinois, on or before October 13, 1986, unless it has filed a report with the Board and the Village of Addison by that date which evaluates, to the maximum extent possible, the type and degree of noise and odor reductions possible by changes in operation or construction of noise and odor reduction devices. This report must be prepared by a competent individual or firm

and must consider all reasonable methods of control. Each control option shall include anticipated pollution reductions, the cost of implementation, and an estimate of a reasonable time for implementation. If LSI fails to timely submit the required report, the cease and desist order will remain effective until such a report is filed. Once such report is filed, the Village of Addison shall have 30 days to respond to that report, and the Board will take appropriate further action thereafter.

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 14th day of August, 1986, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board