

ILLINOIS POLLUTION CONTROL BOARD  
August 5, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 73-30  
 )  
 W. F. HALL PRINTING COMPANY and )  
 CHICAGO ROTOPRINT COMPANY, )  
 )  
 Respondents. )

Mr. Lee A. Campbell, Special Assistant Attorney General, appeared  
for Complainant;  
Ms. Gayle Haglund, Attorney, appeared for Respondents.

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

This matter was originally filed as an enforcement action on January 26, 1973, the Complaint alleging that Respondents had caused air pollution in violation of §9(a) of the Environmental Protection Act (Act). Ill. Rev. Stat., Ch. 111-1/2, §1009 (1975). Although there has been some delay by reason of litigation, Hall v. EPA, 16 Ill. App. 3d 864, 306 N.E.2d 595 (1974), the case has now been actively contested before this Board for approximately three years. As the parties note, the Record now contains more than 1,300 pages of testimony and over 60 exhibits, (R. 1339).

At a hearing on July 12, 1976, the parties entered a "Tentative Settlement Agreement," which is the subject of this Interim Opinion and Order. With several observations, we approve of that instrument.

The entry of the "Tentative Settlement Agreement" does not mean that the parties have reached actual agreement on the main issues in this case. On the contrary, that instrument is largely a recitation of the areas in which they disagree. Although there is agreement that the main issue here is an alleged odor problem with Respondent Hall's printing plant, there is disagreement on whether Hall is responsible for any odors or, assuming such odors, whether it is economically reasonable and technically feasible to abate them.

The purpose of the "Tentative Settlement Agreement" is the evaluation of a new "low heat set" ink formulation recently instituted by Hall, (R. 1347). Hall contends, "but the record does not demonstrate" that these inks are "virtually 'smoke free'" (id.), apparently further contending that if an odor problem did exist, these inks have abated the problem.

What is yet to be determined before these inks can be declared to be the feasible solution to emissions at the Hall plant is whether or not the persons who live in the vicinity of Respondent's plant agree with the predictions that the emission from these inks is low odor or odor free. In order to accomplish this last objective, the Complainant and Respondent Hall propose to survey the neighborhood under conditions agreed upon between the parties. (R. 1348).

The Board agrees that the survey program, which is quite extensive and will cover both previous witnesses and many other neighborhood residents, should in fact determine whether the new inks have abated any possible past problems.

The parties have agreed that the results of the survey will be submitted to the Board. If the parties disagree after the survey as to whether Hall is a cause of air pollution, the survey will be submitted to the Board as a joint exhibit for use in reaching a conclusion on the merits of the case.

If the parties agree that Hall is not presently causing air pollution, the parties further agree to then request a Board Order on the following final settlement provisions, under which Hall is to:

- A) Keep and maintain at its plant for a period of at least two years records of the following:
  - 1) Ink and solvent purchases;
  - 2) Production and operating records; and
  - 3) Type and quantity of inks used.
- B) Make the aforesaid records available for inspection by representatives of the EPA and Illinois Attorney General's office during normal business hours.
- C) Continue to use low heat set inks exclusively on its presses until or unless a new technological breakthrough occurs in this technically fluid field.
- D) Respondent would continue to pursue other technological solutions which would guarantee results the same as or better than those now being achieved with the low heat set inks. In either case, W. F. Hall would submit the necessary permit applications to the EPA for approval.

Although there is no mention of a finding of violation, and only Respondent Rotoprint would be dismissed, Hall would pay \$10,000 into the General Revenue Fund of the State, "a figure which represents a substantial reimbursement to the State of Illinois of the costs and expenses incurred by it in this litigation." (R. 1352).

If circumstances warrant presentation of a final settlement to the Board, that settlement should be supported by briefs justifying it in light of the extensive Record in this matter.

It is not clear that our acceptance of a settlement containing future requirements upon one or both parties would be binding in the absence of a finding of violation. If a finding of violation is not necessary, the settlement's adequacy to fulfill the purpose of the Act should be clarified.

With regard to the issue of Hall's payment to the General Revenue Fund, it is not clear that the Board could accept payment in lieu of a penalty for the purpose stated above. See, City of Monmouth v. Pollution Control Board, 57 Ill.2d 482, 313 N.E.2d 161, 166 (1974); City of Waukegan v. Pollution Control Board, 57 Ill.2d 170, 311 N.E.2d 146, 153 (1974).

Without need of citation, the Board notes that it has a greater interest in the terms of settlements before it than might a similarly situated court. Although agreeability to the parties is of course essential to any settlement, a settlement must also be agreeable to the Board; any settlement must demonstrate to the Board that compliance has been or will be attained. The Board cannot and will not be bound to approval of a final settlement unless such demonstration is forthcoming.

After a long and arduous litigation, the parties' attempt at resolution is laudable. It is merely the Board's wish to be sure that any settlement is adequate, fair, complete and enforceable.

INTERIM ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that the "Tentative Settlement Agreement" submitted by the parties to this matter be approved, in conformity with the foregoing Interim Opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 5<sup>th</sup> day of August, 1976, by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board