ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 75-438
NATIONAL SUPERIOR FUR DRESSING AND DYEING COMPANY, an Illinois corporation, Respondent.	)	

James L. Dobrovolny, Assistant Attorney General, appeared for the Complainant;
Harvey M. Sheldon, Attorney, appeared for the Respondent.

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

The Complaint in this matter was filed by the Environmental Protection Agency (hereinafter "Agency") on November 10, 1975, and alleged that Respondent National Superior Fur and Dyeing Company (hereinafter "National Superior Fur") owned and operated an existing emission source located at 4447-61 West Cortland Street, Chicago, without the requisite operating permit, in violation of Section 9(b) of the Environmental Protection Act (Act) and Rule 103(b)(2) of Chapter 2: Air Pollution, of this Board's Rules and Regulations. Ill. Rev. Stat., Ch. 111-1/2, §1009(b) (1975); Ill. P.C.B. Regs., Ch. 2, Rule 103(b)(2). Hearings were held in Chicago on April 15, 1976 and May 26, 1976. No public comments have been received in the matter.

National Superior Fur, a family owned and operated business, processes (dresses) animal hides and cleans fur coats. Approximately 60-75 persons are employed at its plant, (R. 74), which is located in a mixed commercial-residential area (R. 94).

The specific processes at National Superior Fur's plant, which were the subject of this matter, were:

> 1. The fur cleaning operations, wherein furs are rotated in a drum with sawdust, shaken out manually, placed in a shaker or suction drum, and then further hand cleaned; the alleged emissions involved in this operation result from the suction or shaker drums, the exhaust from which is vented to the atmosphere through a simple cyclone, (e.g., R. 29, 36, 93).

2. The operation of a small heating boiler, wherein sawdust from the animal skin curing operations is burned as needed to provide heat; it was alleged at hearing that emissions from this boiler are uncontrolled and, without control, may possibly cause or contribute to air pollution.

Although the Record in this matter describes Respondent's processes in detail and at length, further explanation is not needed here, as the above constitute the only major potential sources of emissions seriously in issue here.

The Agency's case (and grounds for our finding of violation) are made by Respondent's admissions (e.g., R. 9, 63, 66), that it did not possess the requisite permits. Because Respondent seeks dismissal on other grounds, however, we shall dispose of those issues before considering matters in mitigation or aggravation of the admitted violation.

a. At the close of the Agency's case, and again at the close of the Record, Respondent moved for dismissal on the grounds that the Agency had failed to make a prima facie showing of violation.

We find that Respondent's contentions are without merit. Respondent apparently felt that it was the Agency's burden to prove culpability with relation to all the sections in Section 33(c) of the Act, Ill. Rev. Stat., Ch. 111-1/2, §1033(c) (1975), citing Southern Illinois Asphalt v. Pollution Control Board, 60 Ill.2d 204, 326 N.E.2d 406 (1975). Such is not the case. Respondent bears that burden. Processing and Books v. Pollution Control Board, ____Ill.2d____, No. 47682 (Ill., March, 1976.)

With regard to Complainant's burden under Section 31(c) of the Act, Respondent's explicit admissions and the testimony of Respondent's president show that Respondent did, in fact, (1) operate during the period in question, and (2) without a permit. That is sufficient.

b. Respondent also moves dismissal in its Brief, claiming (without citation) that the Court Reporter's failure to strike portions of witnesses' testimony upon the Hearing Officer's orders deprives it of a fair hearing, and prejudices it upon Board review of the Record.

That contention is without merit.

c. Again without citation, but apparently relying upon the Appellate Court's decision in Commonwealth Edison v. Pollution Control Board, 25 Ill.App.3d 271, 323 N.E.2d 84 (1974), Respondent claims that the Agency's denial of a permit application by Respondent on August 13, 1975 was improper because the Appellate Court reversed Board adoption of certain rules cited in the Agency's permit denial, relieving Respondent of culpability for failure to have the necessary permit.

Although the Appellate Court's 1974 Commonwealth Edison decision was later reviewed by the Supreme Court, 62 Ill.2d 494, 343 N.E.2d 459 (1976), we need not decide this issue. Respondent failed to adequately show, as was its burden upon Complainant's prima facie case, that the Agency's permit denial was entirely based upon factors affected by Commonwealth Edison. In an enforcement case such as this we presume that the Agency as a governmental body acted properly in denying a permit; Respondent presents no showing to the contrary. Beyond any such presumption, Respondent failed to make an adequate showing to support its defense under this theory, which does not constitute an affirmative defense. See, Gard, Jones on Evidence, §§ 3:29, 3:30, 3:31, (6th Ed., 1972); Gard, Illinois Evidence Manual, §30 (1963) ("The Rule is so universal in its application . . ."); cases cited in preceding.

In any event, this theory by Respondent is rendered particularly weak by virtue of the dates involved. Respondent became subject to the permit requirement on June 1, 1973, and submitted no permit application to the Agency until about July 29, 1975. No excuse has been made under this theory for the period from June 1, 1973 until July 29, 1975. A finding of violation is mandated.

Turning to matters of mitigation and aggravation, we have little competent or relevant evidence before us. The Agency's sole witness, apparently attempting to show adverse effects from Respondent's operations, gave no useful testimony on the issue. He observed no emissions (R. 39), and his estimations were without adequate foundation (e.g., R. 32, 29, 39, 41, 56).

Respondent, on the other hand, attempted to show that its emissions were likely within the limitations of Board Regulations. That attempt, however, was based on purported "expert" testimony almost totally without foundation, (e.g., R. 111, 128, 139). The only useful testimony in this regard was to the effect that Respondent's operation did result in a barely discernible emission plume with a very slight blue tinge, (R. 140).

Despite these inadequacies, we feel that a penalty is warranted by National Superior Fur's violation. Respondent's explanation that the individual responsible for obtaining the necessary permits suffered from some vague emotional difficulties does not explain the inordinate delay in even requesting a permit.

In the absence of evidence from Respondent, we cannot judge the social and economic value of Respondent's operations. Certainly without the permit, such value is diminished insofar as its pollution potential cannot be weighed. We are therefore unable to judge the relative weight of any social and economic value against the plant's *pollution potential*.

None of the remaining factors in §33(c) of the Act being in issue here, we find that a penalty is necessary for the protection of the permit system, and to assure that potential environmental damage which cannot be prevented without that system does not occur. A civil penalty of $1,000 should serve the purposes of the Act in this matter.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent National Superior Fur Dressing and Dyeing Company is found to have operated an existing emission source without the requisite permits from June 1, 1973 until November 10, 1975, in violation of Section 9(b) of the Environmental Protection Act and Rule 103(b)(2) of Chapter 2: Air Pollution, of the Board's Rules and Regulations.

2. Respondent shall pay as a penalty for said violation the sum of One Thousand Dollars ($1,000), payment to be made within thirty (30) days of the date of this Order by certified check or money order to the following address:

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

3. Respondent shall cease and desist the above violations unless, within sixty (60) days of the date of this Order, the proper permit applications have been made to the Environmental Protection Agency, and within ninety (90) days thereafter the proper permits have been obtained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of September, 1976, by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board