ILLINOIS POLLUTION CONTROL BOARD
June 18, 1976

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 75-494
PIELET BROS. TRADING, INC., an Illinois Corporation, and Seymour Pielet, Respondents.	)	

Mr. M. Barry Forman, Assistant Attorney General, Attorney for Complainant
Mr. A. J. Nester, Attorney for Respondent

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

This matter comes before the Board on a Complaint filed December 19, 1975 by the Environmental Protection Agency (Agency) charging that the Respondents, Pielet Bros. Trading, Inc. or Seymour Pielet, owned and operated certain air pollution control equipment without first obtaining operating permits from the Agency as required by Rule 103(b)(1) of the Air Pollution Regulations and in further violation of Section 9(b) of the Environmental Protection Act (Act).

The subject matter of this Complaint is an automobile shredding facility located at 1200 North First Street, National City, St. Clair County, Illinois. As an integral part of the aforesaid facility, the Company operates two cyclones to collect particulate emissions from the facility's shredding unit and from certain pickup points over the conveyors.

At the hearing held on March 9, 1976, the parties stipulated to the following facts. Work for the construction of the facility began in April of 1975. No attempt was made to secure an Agency construction permit prior to initiating this work, and in May an Agency representative informed Respondent of a need for a construction permit for the installation of the equipment. Following correspondence between the parties a construction permit was issued on November 5, 1975. This installation process was completed on August 22, 1975, at which time the facility began operation. While it is not clear when Respondent first made application for an operating permit, such permit was issued by the Agency on February 19, 1976.

The Complaint in this matter concerns only the operating permit violation from September 9, 1975 until December 19, 1975 and on the basis of the record, there can be no doubt that an operating permit violation is established.

Respondent offers several matters in mitigation that require attention. First, Respondent alleges that the equipment was especially fabricated for the project and that no test data was available to be submitted to the Agency. This argument has absolutely no merit. In fact, specifications and data were available for similar equipment, and Respondent used this data in obtaining the Agency permits. (R. 17). Assuming for the moment that specifications were not available, the Board would still remain unreceptive to this argument. It is just this type of equipment which accentuates the value of the construction and operating permit system. Because the equipment is unique and no specifications are available, all the more necessitates that the operator obtain the permit prior to operation to assure that environmental harm will not result from its operation.

Second, Respondent argues that the Agency did not show that particulate emissions occurred in violation of the regulations. This argument implies that since the operation of the equipment did not cause a violation of the regulations (an after the fact determination), no penalty should be assessed. Acceptance of this argument would greatly diminish the value of the permit system which has as one of its goals an Agency predetermination whether the operation of the equipment will cause a violation of the regulations. Our cases are replete with operators who have side-stepped the permit system producing results causing serious environmental damage. Thus, while the Board will consider such evidence in partial mitigation, to consider such in complete mitigation would totally emasculate the permit system.

Third, Respondent argues that it acted in good faith in its attempt to comply with the permit requirements after being contacted by the Agency. This allegation is not supported by the record. While Respondent did engage in a course of conduct which eventually led to the issuance of an operating permit, the Board believes that its actions should have been taken with greater alacrity. Respondent was apprised of the operating permit requirement in May of 1975, and began operating the facility on August 22, 1975. The Complaint in the instant matter was filed on December 19, 1975. Nonetheless it was not until January 16, 1976 that the Agency finally received an application for the operating permit, almost five months after the facility was in operation. On the basis of these facts the Board finds that Respondent's actions were not taken in good faith, but rather were dilatory. The Supreme Court has upheld the imposition of a penalty where equipment was installed and operated after Agency denial of the permit application (Mystik Tape v. PCB, 60 Ill. 2d 330, (1975). Since Respondent should not be able to place itself

in a more advantageous position by merely refusing to apply for the requisite permit, the Board finds that a penalty is likewise appropriate in this matter because Respondent delayed almost five months after beginning operation before filing an operating permit application.

Although the Respondent alleges that the Agency acted unreasonably with the construction permit application, it nonetheless failed to file a permit denial appeal with the Board. Although the Respondent alleges that it was initially unaware of the permit requirements, even after being informed of the requirements it chose to operate without a permit. If Respondent had filed a variance petition with the Board in May when informed of the permit requirements, the 90 day decision period would have expired by the time the plant was placed in operation. Both the permit denial appeal and the variance procedure could have provided Respondent with the relief that it desired and needed. At hearing Respondent did not satisfactorily explain why it failed to follow either of these procedures.

In view of the foregoing the Board finds that Respondent operated its facility without the requisite operating permits and the Board will assess $1,000.00 as a penalty for such violations.

Seymour Pielet was charged in the alternative with the Company with these violations. The record does not support such a charge and the Complaint as regards to this Respondent shall be dismissed.

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

ORDER

1. Respondent, Pielet Bros. Trading, Inc., has violated Rule 103(b)(1) of the Air Rules and Section 9(b) of the Act and shall pay $1,000 as penalty for such violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of the date of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

2. That portion of the Complaint as it concerns Seymour Pielet is dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of June, 1976 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board