

ILLINOIS POLLUTION CONTROL BOARD  
October 9, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 )  
 v. ) PCB 75-186  
 )  
 )  
 H.D. PARK, R.P. WIGGERS, NORMA )  
 P. MUCK, NORMAN H. MUCK, d/b/a )  
 ROCKY FORD LIMESTONE COMPANY, )  
 )  
 Respondents. )

MR. HOWARD V. THOMAS, Assistant Attorney General, appeared on behalf of the Complainant;  
MR. WILLIAM C. BATES, appeared on behalf of the Respondents.

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

The Illinois Environmental Protection Agency (Agency) filed a complaint against H.D. Park, R.P. Wiggers, Norma P. Muck, and Norman H. Muck, d/b/a Rocky Ford Limestone Company (Respondents), on May 1, 1975.

The Agency alleged that Respondent, prior to June 1, 1973, and subsequently to the date of the Complaint, operated three rock crushing machines at its facility without an Agency operating permit, in violation of Section 9(b) of the Illinois Environmental Protection Act (Act), and Rule 103(b)(2) of the Board's Air Pollution Control Regulations (Air Rules).

The Agency filed a Request for Admission of Facts on June 19, 1975. Respondents filed an affirmative answer to the Request on July 10, 1975, admitting ownership of the quarry, operation of the crushing machine, and lack of an operating permit. A hearing was held on July 15, 1975.

At the hearing a Stipulation of Facts was presented by the parties. No other testimony was introduced and there were no citizen comments. The stipulated facts are as follows. Respondents owns and operate a quarry facility at Lincoln, in Logan County, Illinois. Respondents own and operate a quarry facility which involves open pit quarrying of limestone rock (R. 5). As a part of the operation, three rock crushing machines were installed prior to April 14, 1972. Operation of these

machines results in the emission of particulate matter (R. 6). These machines were in operation prior to March 1, 1973, and subsequently to the date of the Complaint (R. 6). At no time before or since June 1, 1973 have Respondents possessed an Agency operating permit for these three machines (R. 6).

On December 11, 1972, Respondents applied for an operating permit, and a construction permit to install a dust suppression spray system to abate particulate emissions (R. 6-7). The construction permit was granted by the Agency on February 7, 1973 (R. 7). However, the operating permit was denied on February 23, 1973 as Respondent's facility was not yet in compliance with particulate emissions standards (R. 7).

Respondents subsequently failed to resubmit an operating permit application until May 22, 1975 (R. 8-9). Respondent's stipulate that the delay in resubmitting an application arose from a delay in installation of the dust suppression system due to a labor shortage, inability to employ an electrician, and parts delivery time (R. 8). Respondents also stipulate that a progress report was submitted to the Agency on January 20, 1975 stating the reasons for the delay (R. 8); that on May 22, 1975 after installation of the abatement equipment a new permit application was submitted to the Agency; and that on July 11, 1975, they resubmitted the application on Form APC 200 as requested by the Agency (R. 10).

An Agency on-site investigation on February 20, 1974 indicated that no dust suppression system had been installed (R. 8-9). Furthermore, the Agency stipulates that it was advised by Respondent at that time, that although all of the necessary abatement equipment was on hand, Respondent wished to delay installation until after a planned facility move. This move was to occur approximately one year from the date of the Agency's on-site inspection (R. 9).

The record fails to state whether this move has occurred or is still contemplated. The Agency states that it was advised that the reason for the desired delay was to avoid expenses associated with installation of the system prior to the contemplated move (R. 9). The Agency stipulates that on June 5, 1975, Respondents May 22, 1975 permit application was denied due to the omission of certain factual data (R. 9, 10).

The record then, clearly shows a violation of the Section 9(b) of the Act, and Rule 103(b)(2) of the Air Rules for failure to have an Agency operating permit. Respondent operated the machines in question for over two years beyond the permit compliance date of March 1, 1973. From at least December 11, 1972 onward, Respondent was aware of the necessity for a permit. From February, 1974 on, Respondents had the abatement equipment on hand. Yet Respondents did not complete the installation of this equipment, a prerequisite to applying for a permit, until May, 1975. Respondents permit reapplication occurred on May 22, 1975, over 2 years after the original permit denial, and nearly a month after the May 1, 1975 filing of the Complaint. Furthermore, Respondents' action after the filing of the Complaint raises the inference that Respondent acted out of fear of a lawsuit and the imposition of a penalty rather than a desire to achieve compliance with the Act and Air Rules.

The Board finds that Respondents, H.D. Park, R.P. Wiggers, Norma P. Muck, and Norman H. Muck, d/b/a Rocky Ford Limestone Company violated Section 9(b) of the Act, and Rule 103(b)(2) of the Air Rules by its failure to secure an Agency operating permit.

The Board is required in making a decision, to consider the criteria of Section 33(c). The Board has considered the record in the light of the section's criteria, i.e., degree of injury, social and economic value of the facility, suitability of location, and technical practicability-economic reasonableness of abatement. The record does not permit an evaluation of the effects upon health of the quarry emissions. We can conclude that they exceeded the Board's Regulations because of the necessity for a dust suppression system. A quarry is a necessary operation in order to produce limestone for agricultural use and for construction purposes. The record is silent as to the priority of location of this quarry in its area and its suitability for that area. The technical practicability and economic reasonableness of purchase and installation of the dust suppression equipment is shown by its actual purchase and delivery to the site.

Based on these factors and considering the fact that Respondents reapplication for a permit came only after a Complaint had been filed by the Agency, the Board finds that the imposition of a \$2500 penalty is justified as an enforcement tool to secure full compliance with operating permit requirements of the Act and requirement of the Air Rules.

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

ORDER


It is the Order of the Pollution Control Board that:

1. Respondents, H.D. Park, R. P. Wiggers, Norma P. Much, and Norman P. Muck, d/b/a Rocky Ford Limestone Company, violated Section 9(b) of the Act and Rule 103(b)(2) of the Air Pollution Control Regulations.

2. That Respondents cease and desist operation of the aforementioned crushing machines unless an operating permit is applied for from the Illinois Environmental Protection Agency within the ten (10) days of the Board Order, and obtained within ninety (90) days from the date of the Board Order.

3. Respondent is assessed a penalty of \$2,500 for the aforesaid violations. Penalty payment shall be by certified check or money order made payable to the State of Illinois, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be tendered within 35 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9<sup>th</sup> day of October, 1975 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board