

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
 v.) PCB 74-208
)
 PETER COOPER CORPORATION,)
 DIAMOND GLUE DIVISION,)
 a Delaware corporation,)
)
 Respondent.)

Ms. Kathryn Sheehan Nesburg, Attorney, appeared for the Complainant;
Mr. Henry W. Sledz, Jr., Attorney, appeared for the Respondent.

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

This matter is before the Board on a Complaint filed by the Environmental Protection Agency (Agency) on June 5, 1974, alleging that Respondent Peter Cooper Corporation (Cooper) had operated an inedible rendering process so as to create odor emissions in violation of Section 9(a) of the Environmental Protection Act (Act) and Rule 802(b) of Chapter 2: Air Pollution, of the Pollution Control Board (Board) Rules and Regulations. The facility alleged to be in violation is Cooper's Diamond Glue Division plant, located at 2930 South Robinson Avenue in Chicago, in a heavy industrial area of the city.

The first two hearings in this matter were held in Chicago on October 15, 1974, and May 16, 1975. On June 19, 1975, the parties entered a Joint Stipulation and Proposal for Settlement (Stipulation No. 1), which was the subject of an Interim Order of the Board on July 24, 1975.

The Board's July 24, 1975 Interim Order rejected Stipulation No. 1 for the following reasons:

We reject the Stipulation entered into between the parties. In exchange for the payment of only \$1,000 Respondent is in effect given a shield for possible violations extending over a five-year period. The record does not indicate the magnitude of the interference experienced by residents and others who found it necessary to be near Respondent's plant. The compliance program is not specified in sufficient detail to insure that the public is adequately protected. We don't know the extent of Respondent's knowledge of its possible pollution source. No economic data are supplied on Peter Cooper's financial situation. The cost of the newly constructed brick building is not known nor have possible costs of compliance been included in the record. In light of the record, we find the Stipulation unacceptable.

The Board's July 24, 1975 Interim Order also details the procedural history of this case through that date, the specific operations carried on at the Diamond Glue plant, and various efforts made by Peter Cooper to abate the odor problems which were the subject of the Agency's Complaint. Those matters need not be repeated here.

A third hearing was held in Chicago on Jan. 19, 1976. The parties then entered a new Stipulation and Proposal for Settlement (Stipulation No. 2), which was submitted to the Board in signed form on February 17, 1976. At the January 19, 1976 hearing the parties detailed those changes in Stipulation No. 2 which were made in an attempt to correct the deficiencies which the Board found in Stipulation No. 1. Inasmuch as the Board's July 24, 1975 Interim Order rejecting Stipulation No. 1 adequately summarizes that first stipulation, we shall follow the parties' lead and discuss here only those differences, as they relate to the acceptability of Stipulation No. 2.

1. The Board's first objection was that, for a penalty of \$1,000, Respondent would have been given a shield from enforcement for a possible violation extending over a five-year period. In Stipulation No. 2, the penalty provision is increased to \$1,500, and the Agency has dropped all allegation of violation during the period July 1, 1970 until January 8, 1973, the latter date being the time of the Agency's first inspection of Respondent's plant.

2. To answer the Board's second objection, the record's failure to indicate the magnitude of interference experienced by residents and others as a result of odors from Respondent's plant, Stipulation No. 2 now includes several complaint forms filled out by citizens regarding the effects of the odors upon them. Those complaint forms (Ex. A-L), indicate that the degree of interference was indeed significant.

3. The Board's third objection to Stipulation No. 1 was a lack of specificity in the compliance program, needed to insure that the public would be adequately protected in the stipulated settlement. The parties have added new material (paragraphs 14 through 19 of Stipulation No. 2) describing in detail the compliance program.

In essence, the compliance program in this enforcement case is entirely contingent. Cooper has already constructed (as noted in our earlier Interim Opinion) a brick building to enclose the "tankage," which had previously been stored outdoors, and which both parties agree was the source of the odors in question. Although Cooper apparently believes that use of this building will be sufficient to abate the odor problem, the Agency will nonetheless conduct a 3-month investigation, after which the Agency may require that Cooper install either an afterburner or a wet scrubber to control any odors which still escape. During the 3-month investigation period, Cooper will

prepare construction permits for submission to the Agency should a construction program for the afterburner or wet scrubber be necessary, and will, if additional time for the construction program is indeed necessary, apply to the Board for a Variance during such construction. Cooper will submit a \$5,000 performance bond to cover the eventuality that such construction will be required.

4. To answer the Board's fourth question, concerning the actual source of the odors from Cooper's facility, both parties have agreed that the handling of tankage is (or was) the source.

5. The Board's objection concerning a lack of knowledge of Cooper's financial situation is answered by stipulation to the fact that Cooper could and can afford any control technology likely to be necessary.

6. The Board's statement that the cost of the brick building constructed by Cooper was not shown in Stipulation No. 1 is now corrected in Stipulation No. 2, to show a cost of \$19,500. The cost of any future controls is given at \$10,000, (R.6, January 19, 1976 hearing).

In light of the additional information submitted by the parties, the Board finds that the settlement now before it is adequate. While the penalty remains low, Stipulation No. 2 indicates that the settlement approved here will serve to abate the problems which have existed, if they have not in fact already been abated. In addition, the parties have shown in mitigation that Cooper has expended considerable sums over the last several years in an attempt to abate the problem.

Only two issues remain: The parties did not, in Stipulation No. 2, agree whether, (1) Cooper's Diamond Glue facility is in fact an inedible rendering plant, or (2) whether there was in fact sufficient odor from Cooper's plant to constitute violations of the Act and our Regulations.

First, there can be no doubt that the process described in both Stipulation Nos. 1 and 2, at Cooper's Chicago facility, is in fact an inedible rendering process. Cooper's process fits squarely within the definition given in Rule 801.

Second, the parties did not agree in Stipulation No. 2 as to the presence or absence of violation, (e.g., paragraphs 9, 13). In light of the matters submitted in Stipulation No. 2 on the issues of interference with individuals, economic and technical reasonableness of eliminating odors, and the duration of the problem (see, e.g., Ex. A-L), we have no difficulty finding a violation of Section 9(a) of the Act. Based on our finding that Cooper's facility is an inedible rendering process, we also find a violation of Rule 802(b).

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 Peter Cooper Corporation, Diamond Glue Division, a Delaware corporation, is found to have operated an inedible rendering process in Chicago, Illinois, in violation of Section 9(a) of the Environmental Protection Act and Rule 802(b) of Chapter 2: Air Pollution of the Pollution Control Board's Rules and Regulations.

2. Respondent shall pay as a penalty for the aforesaid violations the sum of Fifteen Hundred Dollars (\$1,500.00), payment to be made within thirty (30) days of the date of this Order by certified check or money order to:

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


3. Complainant Environmental Protection Agency and Respondent Peter Cooper Corporation shall comply with all provisions of the "terms of settlement" of the Stipulation and Proposal for Settlement in this matter filed on February 17, 1976.

4. To assure any further construction which may be required under such terms of settlement, Respondent shall post a performance bond in the amount of Five Thousand Dollars (\$5,000.00), in a form acceptable to the Environmental Protection Agency, such bond to be submitted to:

Environmental Protection Agency
Control Program Coordinator
Division of Air Pollution Control
2200 Churchill Road
Springfield, Illinois 62706

Mr. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 11th day of March, 1976, by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board