

ILLINOIS POLLUTION CONTROL BOARD
December 4, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-117
)
 SEEBURG CORPORATION, a Delaware)
 corporation,)
)
 Respondent.)

Ms. Joan C. Wing and Mr. Richard W. Cosby, Assistant
Attorneys General, appeared for the Complainant;
Mr. Jack Grady, Attorney, appeared for the Respondent.

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

The Complaint in this matter, filed by the Environmental Protection Agency (Agency) on March 13, 1975, alleges in two counts that Respondent Seeburg Corporation (Seeburg) violated Section 9(b) of the Environmental Protection Act (Act) and Rule 103(b)(2) of Chapter 2: Air Pollution, of the Pollution Control Board (Board) Rules and Regulations. Those violations are alleged to have occurred in Seeburg's operation of various painting, plating, and other processes at its Chicago vending machine and jukebox manufacturing facility. Hearings were held in the matter on May 20-21, 1975 in Chicago.

There can be no question, on the record before us, of the fact that Seeburg did not have the required operating permits from the Agency, throughout a period commencing with the effective date of the permit requirement, (June 1, 1973), and continuing through the day prior to the first hearing held in this matter, (May 19, 1975). That fact is readily established from Seeburg's Response to the Agency's Request for Admission, Respondent's testimony throughout the hearings, and even Respondent's brief itself. Although Seeburg did make some attempt to present evidence that it "used reasonable efforts and exercised due care and diligence to prepare applications for operating permits," (Respondent's brief p. 10), apparently in an effort to avoid culpability for its failure to obtain the permits, Seeburg nonetheless never seriously challenged the existence of a violation of the permit requirement.

Instead, to support its argument in mitigation that a significant penalty is not warranted here, Seeburg argues the following matters:

1. Seeburg did not know until February, 1974, of the permit requirement in Rule 103(b)(2).
2. Upon learning of the permit requirement, Seeburg quickly hired a consulting engineer to prepare all necessary permit application documents.
3. Seeburg thereafter relied on its consultant's "professional" status and his representations of continuing effort and the imminency of the permit application filing.
4. An operating permit application has now been filed, following default of the original consultant of his obligation to Seeburg, after preparation by new consulting engineers.
5. The operations which are the subject of Seeburg's permit application do not result in significant emissions to the atmosphere.

Examining these matters individually, we find first that Respondent was charged with the responsibility of obtaining the necessary permits by June 1, 1973; its failure to learn of the permit requirement until February, 1974, is not an adequate excuse for violation prior to that time.

Second, Seeburg's claim that it immediately hired an engineer upon learning of the permit requirement still fails to explain the significant period of time preceding the commencement of efforts to prepare a permit application. Further, it is apparent from the record, (throughout testimony by Respondent's employees), that any good faith evidenced by expeditious hiring of an engineer (even though this occurred months after the permit requirement became effective), effectively lapsed through Respondent's failure to either urge or demand speedy action by the consultant on its permit application.

Third, Seeburg's reliance on its consultant's "professional" status is doubtful, particularly in light of testimony by Respondent to the effect that the permit application appeared to be fairly easy to complete. Seeburg's reliance on its consultant provides very little mitigation in any event; Seeburg cannot delegate its responsibility, under the Act and our Regulations, to obtain the required permits. It was Seeburg's responsibility, and not its consulting engineer's, to obtain the necessary operating permits from the Agency.

Fourth, the permit application finally filed by Seeburg was not submitted to the Agency until after the instant action was commenced. Seeburg obtained new engineering consultants only after this enforcement case had been commenced, and the permit application was submitted only one day prior to the May 20, 1975 hearing in this matter -- nearly two years after the permit requirement became effective.

Fifth, Seeburg's allegations as to the lack of significant emissions from its Chicago plant are founded on weak testimony and evidence. Respondent's Ex. 3, giving the breakdown of paint used in its Chicago factory, gives only a general description of the paints, and only general ranges for exempt and non-exempt solvents in those paints. Nor, may we add, are the exempt solvents actually shown to be exempt; this evidence bears very little weight. In addition, Respondent's statements as to reduced operations at its Chicago plant, and resultant low emissions, cover only a short period out of 23 months of violation shown by the Agency.

In light of Seeburg's admissions here, we need not examine the factors in Section 33(c) of the Act to determine the existence of a violation here. In determining the appropriateness of a penalty, however, we find the following:

1. The character and degree of injury occasioned as a result of this violation is to be measured in terms of the need for a viable permit system, to insure that such injury or interference with the protection of the health, general welfare and physical property of the people does not occur. This Board, in enacting the permit requirement, recognized that necessity. We reaffirm the necessity of such a viable permit system, and find Seeburg's two year failure to comply with the permit requirement is unexcusable.

2. The social and economic value of Seeburg's Chicago factory as a source of employment for area residents is not questioned here; we note, however, that the permit requirement which Seeburg violated was designed and intended for the protection of those individuals, and for the public at large.

3. Nor are the suitability or the unsuitability of Seeburg to its Chicago location, or its priority in such location, questioned here; we do note, however, that where compliance with a requirement of the Act and our Regulations is imminently practical, and that requirement is violated, the suitability of that factory, and its social and economic value, are considerably diminished.

4. Respondent's own testimony demonstrated that compliance with the permit requirement was both technically practical and economically reasonable. The sole responsibility for Seeburg's failure to comply rests with Seeburg itself.

Weighing these factors, the Board finds that a penalty of Four Thousand Dollars (\$4,000.00) is appropriate in light of the period of time involved and Seeburg's failure to actively attempt compliance with the applicable portions of the Act and our Regulations.

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 Seeburg Corporation is found to have violated Section 9(b) of the Environmental Protection Act and Rule 103(b)(2) of Chapter 2: Air Pollution, of the Pollution Control Board Rules and Regulations, in the operation of its Chicago manufacturing facility without the required operating permit from the Environmental Protection Agency.

2. For the aforesaid violation, Respondent Seeburg Corporation shall pay as a penalty, within 30 days of the date of this Order, Four Thousand Dollars (\$4,000.00), payment to be made by certified check or money order to:

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

3. Respondent Seeburg Corporation shall cease and desist all operations of its Chicago manufacturing facility in violation of the aforesaid sections of the Environmental Protection Act and this Board's Rules and Regulations unless, within 120 days of the date of this Order, all required operating permits have been received from the Environmental Protection Agency.

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


Christan L. Moffett, Clerk
Illinois Pollution Control Board