

ILLINOIS POLLUTION CONTROL BOARD
April 4, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 74-477
)
HANDSCHY CHEMICAL COMPANY,)
)
 Respondent.)

Steven Weiss, Assistant Attorney General for the EPA
John Harris, Attorney for Respondent

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

Handschy Chemical Company is charged by the Environmental Protection Agency with operating an air pollution source without Agency permit from January 1, 1973 to December 17, 1974, the date of Complaint. Such operation is alleged to be a violation of Rule 103(b)(2) of the Air Pollution Control Regulations and Section 9(b) of the Environmental Protection Act.

At the public hearing in this matter the parties submitted a Stipulation of Fact in lieu of oral testimony. No member of the public testified at the hearing.

Handschy owns and operates a paint and ink manufacturing facility at its Farac Oil and Chemical Division, Riverdale, Cook County, Illinois. Equipment at this facility includes varnish cooking vessels, ball mills and storage tanks. These emission sources were placed in operation prior to September 2, 1971. This plant produces 975,000 lbs. of ink and 4,200,000 lbs. of varnish per year. Emissions from the varnish cooking vessels are controlled by two Venturi-type "jet scrubbers".

On August 11, 1972 Respondent requested permit applications from the Agency for its operation. Some two months later Respondent submitted its permit application to the Agency. This application was rejected November 3, 1972 because the Company had failed to file a process flow diagram or its equivalent, had failed to file a compliance plan and progress completion schedule, and had failed to file more than 15 other required documents.

Handschy resubmitted its application for permit on February 15, 1973 and it was rejected by the Agency on March 14, 1973. This time the Company had failed to submit corporate authorization for the signature on the permit application, an adequate flow diagram and six other required documents.

Thereafter, for a period in excess of 18 months, Respondent did not file any other application or reapplication for an operating permit. On September 23, 1974 an Agency engineer visited Respondent's facility to discuss requirements to obtain a permit. In a letter dated October 3, 1974 the Agency's Region II Manager notified Handschy of certain informational requirements which were to be met in a new permit application. Respondent was also advised that the Agency was considering legal action for certain alleged violations. Three weeks later Respondent was sent another "warning letter" by the Agency which advised that correspondence within 14 days was required or the Agency would immediately initiate prosecution proceedings.

Respondent submitted its re-application for permit on November 19, 1974 for which an operating permit was granted on December 2, 1974. Handschy states that it was at all times financially able to obtain a permit or variance and that the permit was obtained without modification or replacement of any existing equipment or addition of new equipment.

In its closing argument at the public hearing, Respondent points out that it was diligent in its pursuit of the permit from August 1972 to February 1973 after which a "dormant period" was entered. Respondent believes that both parties are partially responsible for the dormant period--Respondent for its inaction and the Agency for not contacting Respondent.

Respondent also claims it is a mitigating fact that the Agency did not file its Complaint until after the permit had been issued. The fact that Handschy was able to secure the permit without the addition of any equipment, is said to be conclusive proof that Handschy was not contributing to any air pollution during the time period involved. Respondent believes that no monetary penalty should be imposed because of Respondent's acts of good faith and "reasonable amount of diligence" (R. 8).

This record clearly shows that Handschy had full knowledge of its lawful requirement to obtain an operating permit. Efforts to secure this required permit started over 4 1/2 months before it was required to have such permit. The record further shows that Respondent's initial applications were incomplete and that

Handschy abandoned its efforts after two rejections. The 18 month delay does not indicate diligence or any great concern for compliance with the law. We find that Handschy was dilatory and for approximately 1 1/2 years was in deliberate violation of the permit requirement.

The fact that no additional control equipment was required when Handschy finally did obtain the operating permit does indicate that there was compliance with emission standards. This is a mitigating factor.

The Illinois Supreme Court has recently held that this Board does not have authority to impose a monetary penalty for punitive purposes and the imposition of a monetary penalty will not be sustained unless it will aid in the enforcement of the Act. Southern Illinois Asphalt Company vs. Pollution Control Board, et al, ___ Ill. ___ (March 1975). Civil penalties were set aside where it appeared that the failure to obtain permit was inadvertent, the Respondent was not dilatory or recalcitrant and had come into compliance prior to the time the EPA commenced its prosecution.

We impose a monetary penalty in cases such as this one as an aid to the enforcement of the Act. The permit program is crucial for pollution control in Illinois. If an emission source could avoid penalty by obtaining a permit at any future date then there is no incentive to comply with essential deadlines. The emission source could delay filing a permit application until its omission was discovered by the Agency. For a deliberate omission the penalty must be imposed. The Supreme Court implies that a penalty can be imposed where necessary to aid enforcement of the Act and where the Respondent has been dilatory or recalcitrant as Handschy was in this instance.

Having considered the entire record in this matter it is the finding of the Board that Handschy Chemical violated Rule 103(b)(2) of the Regulations and Section 9(b) of the Act from January 1, 1973 until December 2, 1974. A civil penalty in the amount of \$500 is appropriate.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that Handschy Chemical Company shall pay to the State of Illinois by April 31, 1975 the sum of \$500 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 4th day of April, 1975 by a vote of 3 to 0.

Christan L. Moffett