ILLINOIS POLLUTION CONTROL BOARD

October 24, 1974

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 72-466
RAIL-TO-WATER TRANSFER CORP., Respondent.	)	

ORDER OF THE BOARD (by Dr. Odell)

On October 10, 1974, Rail-To-Water Transfer Corp. (RTW) moved that we modify or vacate our final Order of September 5, 1974, arguing that the imposition of a fine was inappropriate and that the part of our Order dealing with controls for the pan established a date of compliance too difficult to achieve.

We do not believe that a penalty was inappropriate in this case. First, technology was available before the time of the violations so that some of the pollution problems could have been solved. This case, therefore, is clearly differentiated from City of Monmouth v. Pollution Control Board 57 Ill. 2d 482 where the Court struck down the penalty because the City had done all it could to solve its environmental problems. Second, a person can be found to have violated Section 9(a) of the Environmental Protection Act (Act) any time after July 1, 1970, even if at the time of the hearing in the enforcement action those pollution sources have been successfully curtailed. To rule out a penalty simply because conformity with the law is achieved before the hearing occurs would encourage others to procrastinate in their abatement efforts; it could persuade some to delay pollution control on the chance their violations might not be noticed until after compliance had been achieved. Third, the penalty of $6,000 was reasonable in light of the factors in Section 33(c) of the Act. The record substantiates the character and degree of injury and unreasonable interference suffered by citizens over a prolonged period. Also, it was technically feasible and economically reasonable for RTW to reduce emissions before the time that the enforcement action was brought. The changes in Phases I and III (for non-tween-deckers) could technically have been completed before June 1972; the Phase II dust collection system was feasible before 1973; the coke piles could have been covered earlier than they were. When technology is available, failure to implement controls means that the community must pay the price of the violator's pollution problem. Simply because Respondent orderly went about the task of

abating major pollution sources does not mean neighbors should be made to suffer in the interim. The fact that the Respondent did not intend to create a pollution problem is not relevant to the determination of a violation, because the Act is malum prohibitum. See Meadowlark Farms v. PCB 17 Ill. App.[3] 851 (February, 1974).

Respondent's second motion stems from technical difficulties it is having controlling the emissions from the pan. Respondent argues that the pan should be considered as part of Phase III for purposes of compliance. However, on page 11 of Respondent's May 9, 1974, brief, RTW clearly includes the pan in its Phase II operations. The inability of Respondent to meet the Phase II compliance date for the pan is not to be resolved by making the pan subject to the more lenient Phase III schedule. Inadequate information was given to determine whether the compliance schedule for the pan merited alteration. A request for a variance through the mechanism outlined in Procedural Rule 401 is the proper way to handle such difficulties.

The Motion to Modify or Vacate Order is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of October, 1974, by a vote of 5 to 0.

Christan L. Moffett