

ILLINOIS POLLUTION CONTROL BOARD  
December 5, 1974

ENVIRONMENTAL PROTECTION AGENCY )  
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 )  
 v. ) PCB 74-265  
 )  
 )  
 BENJAMIN HARRIS & COMPANY )  
 )

MT. JEFFREY S. HERDIN, Assistant Attorney General, appeared on behalf of the Environmental Protection Agency;  
MR. BRUCE A. SPEAR, Altheimer & Gray, appeared on behalf of Benjamin Harris & Company

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

The Agency filed a complaint against Respondent (Benjamin Harris & Company) on July 10, 1974, charging it with failure to obtain a permit for the discharge wastewater to Thorn Creek, a water of the State of Illinois, and that failure to obtain a permit constituted a violation of Rule 903(a) of the Water Pollution Regulations, and of Sections 12(a) and (b) of the Environmental Protection Act.

A hearing was held on September 4, 1974, at which no witnesses appeared but a Stipulation of Facts, agreed upon by the Agency and Respondent, was presented. The Stipulation does not contain a proposal for settlement.

STIPULATION OF FACTS

1. Respondent is an Illinois corporation having its principal place of business in the City of Chicago Heights, County of Cook, State of Illinois.
2. Respondent is engaged in the business of reclaiming and recycling used materials for reuse by industry in the form of brass and bronze ingot, as well as the production of ingot from virgin metal.
3. Respondent owns and operates a certain facility for the smelting of brass and bronze located at the intersection of 11th and State Streets, Chicago Heights, Cook County, Illinois.

4. Respondent's only industrial usage of water is as a coolant for its product, ingot. The water is sprayed over the ingot and, after flowing through a series of settling tanks and screens, the water, in the form of non-contact cooling water, is discharged into the City of Chicago Heights sewer system, which discharges into the State Street Ditch which discharges into Thorn Creek.

5. The aforesaid non-contact cooling water is an industrial waste as that term is defined in Rule 104 of the Illinois Pollution Control Board Rules and Regulations, Chapter 3 (hereinafter referred to as "Water Regulations") adopted pursuant to Section 13 of the Environmental Protection Act (hereinafter referred to as the "Act"), and thereby is "wastewater" as that term is defined in Rule 104 of the Water Regulations.

6. Thorn Creek is a "water" of the State of Illinois as that term is defined in Rule 104 of the Water Regulations.

7. As a result of the discharge of wastewater into the waters of the State of Illinois, Respondent's facility is a "wastewater source" as that term is defined in Rule 104 of the Water Regulations.

8. Rules 903(a) and (c)(1) of the Water Regulations require in part that any wastewater source consisting solely of non-contact cooling water obtain an Operating Permit from the Illinois Environmental Protection Agency by June 30, 1973.

9. Since July 1, 1973, Respondent has operated its aforesaid wastewater source without having first obtained an Operating Permit from the Illinois Environmental Protection Agency.

10. Prior to the filing of the Complaint in this matter on July 10, 1974, the Respondent had not knowingly or intentionally failed to comply with the provisions of the Act or of the Water Regulations. Rather, as more particularly described in Paragraphs 11 through 15, below, the Respondent has at all times relevant hereto taken steps which, the Respondent believed, constituted complete compliance with the Act and the Water Regulations. Further, as more particularly described in Paragraphs 13 through 17 below, Respondent, in cooperation with the EPA is taking steps to completely eliminate the discharge of wastewater.

11. On June 21, 1971, pursuant to the Refuse Act Permit Program, the Respondent filed with the Department of the Army, Corps of Engineers, its "Application to Discharge or Work in Navigable Waters and Their Tributaries." On the same date, Respondent informed the EPA of said filing and forwarded to the EPA a copy of said application. Neither the Department of the Army nor the EPA ever advised Respondent as to whether said permit would or would not be issued. Copies of said application and correspondence relating thereto are attached hereto as Exhibit A and made part hereof.

12. On or about July 12, 1974, Respondent received the draft NPDES Permit, a copy of which is attached hereto as Exhibit B and made a part hereof. Presumably, the Draft NPDES Permit was received as a result of Respondent's 1971 application as described in Paragraph 11 above.

13. In a letter to EPA in early June 1974, prior to the filing of the Complaint herein, the Respondent advised the EPA that it proposed to install equipment necessary to recirculate the water used in its production process, thereby reducing the discharge to zero. A copy of said letter is attached hereto as Exhibit C and made a part hereof.

14. In a letter dated June 7, 1974, the EPA acknowledged receipt of the Respondent's letter of early June 1974, stating as follows:

"We are pleased to note that action is being taken to recirculate the water used for cooling of ingots and to, thereby eliminate its discharge to the storm sewer. We trust that this will eliminate discharge of all industrial discharges to the storm sewer.

Please advise this office when the above-described project has been completed."

A copy of said letter of June 7, 1974, is attached hereto as Exhibit D and made a part hereof.

15. In July, 1974, the Respondent initiated a program to implement the recirculation project and so advised the EPA in a letter to the EPA dated July 26, 1974, a copy of which is attached hereto as Exhibit E and made a part hereof.

16. Additional correspondence between Respondent and the EPA regarding Respondent's recirculation project indicates further communication and cooperation between the EPA and the Respondent with respect to the implementation of the recirculation project. Copies of said correspondence are attached hereto as Exhibit F and made a part hereof.

17. Because the recirculation project, when completed, will completely eliminate the discharge of wastewater from the Respondent's facility, the Respondent will not, upon completion of the project, be required, by the terms of the Act or the Water Regulations, to obtain an Operating Permit.

18. Prior to the filing of the Complaint in this matter, the Respondent had not received any notice from the EPA or any other Agency of the State of Illinois of any requirement that it obtain an Operating Permit, and Respondent had no independent knowledge of any such requirement."

We note that the word "non-contact" is incorrectly used both in the Complaint (Comp. P. 2, Para. 6)(P. 3, Para. 9) and in the Stipulation (P. 3, Para. 4). The water clearly contacts the ingots and is thus contact cooling.

We also note the silence of the Stipulation on whether Respondent has applied for a discharge permit since becoming aware of the necessity to acquire one. Respondent should immediately make application for a permit if it has not done so, since it will be several months before its zero discharge system is operational.

Respondent filed a Post Hearing Brief on September 10, 1974, pleading that the facts bear against any penalty. We consider failure to apply for a permit quite serious, and while we consider as mitigations its misguided actions in applying for a permit and its initiation of a program to reduce its discharge to zero, we cannot overlook its failure completely.

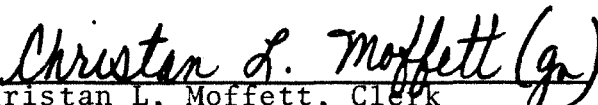
This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the Order of the Pollution Control Board that:

Benjamin Harris and Company pay a penalty of \$200 for violation of Rule 903(a) of the Water Pollution Regulations, payment to be made within 35 days of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 5th day of December, 1974 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board