

ILLINOIS POLLUTION CONTROL BOARD
February 14, 1975

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| PEOPLE OF THE STATE OF |) | |
| ILLINOIS |) | |
| Complainant |) | |
| v. |) | PCB 74-224 |
| FOSECO, INC., |) | |
| A New York Corporation |) | |
| Respondent |) | |

Mr. Marvin N. Benn, Assistant Attorney General, on behalf of Complainants.
Mr. Robert A. Knuti, Attorney, Lord, Bissell & Brook, on behalf of Respondents.

OPINION AND ORDER of the Board (by Mr. Zeitlin)

This case came before the Board originally on a Complaint filed by the Attorney General on June 14, 1974. On June 27, 1974 an Amended Complaint was filed with Board, which in essence merely added an additional count predicated upon the same facts. The Amended Complaint alleged that Respondent Foseco, Inc., (Foseco), had violated various sections of the Environmental Protection Act, (Act), and provisions of the Board's Air Pollution Rules and Regulations, Chapter 2 (Rules). The alleged violations in the Amended Complaint's four Counts can be summarized as follows:

1. Foseco violated Rule 622 and Section 9(b) of the Act in that Foseco engaged in the manufacture or processing of asbestos-containing products without a Permit for Manufacturing from the Agency (Count 1, para. 4.)
2. Foseco violated Rule 621(a) in that it engaged in the processing or manufacture of asbestos-containing materials, which involved the potential discharge of visible amounts of asbestos as fiber or asbestos-containing, without a full time supervisor for such activity to insure compliance with all applicable regulations.
3. Foseco violated Rule 621(b) in that Foseco engaged in the processing described above without sufficiently instructing its employees in the dangers associated with asbestos, or in the precautions to be taken when working with asbestos (Count 1, para. 6).
4. Foseco violated Rule 621(c) when it engaged in the processing described above without providing facilities to prevent employees from removing from the site visible amounts of asbestos-containing material on their clothing (Count 1, para. 7).
5. Foseco violated Rule 621(d) when it engaged in the processing described above and did not provide for the vacuuming or other suitable collection of asbestos-containing wastes or spills, or provide for the adequate disposal of asbestos-containing wastes or spills (Count 1, para. 8).

6. Foseco violated Rule 652 when it engaged in the processing described above without adequately controlling asbestos-handling facilities so as to vent exhaust air through air pollution control equipment, or so as to allow for proper sampling of exhaust air (Count 1, para. 9).

7. Foseco violated Rule 654 when it engaged in the processing described above without providing for adequate air sampling or monitoring (Count 1, para. 10).

8. Foseco violated Rule 103(b)(2) in that since March 1, 1973 it operated an existing emission source of air pollution control equipment without an Operating Permit from the Agency (Count 11, para. 8).

9. Foseco violated Section 9(a) of the Act in that it caused air pollution as defined under the Act.

10. Foseco violated Section 9(b) of the Act and Rule 103(a) in that it constructed air pollution control equipment, specifically a baghouse constructed in April, 1972, without the required permit from the Agency.

BACKGROUND

A hearing was held in the matter on October 25, 1974, at which time the parties stipulated to a continuance in the expectation of reaching a settlement on the issues. On October 29, 1974, at a continuation of the hearing, the parties did in fact enter a stipulation and settlement in accordance with Procedural Rule 333 of the Board. That Stipulation of Facts and Settlement Agreement forms the basis of this Opinion and Order of the Board.

Foseco operates a manufacturing facility at 10823 S. Langley, in Chicago. At that facility it produces refractory "hot tops", which are insulators placed on the top of ingot molds and head casting assemblies prior to the pouring of molten steel into the molds. The hot tops contain various components fabricated of up to 14% asbestos. Additionally, Foseco manufactured a smokeless substitute for exothermic hot topping compounds from about June of 1972 until November of 1973. The latter operation involved the use of graphite and nitric acid, and was known as its "A.P.C." operation; it was discontinued due to technical and economic difficulties. Foseco employs approximately 61 people, including both hourly and salaried personnel. The plant currently operates on three eight-hour shifts.

Asbestos enters the Foseco plant in sealed plastic bags, and when it is to be used is transferred first to a bin and then to a drum on a scale. There are two booths in the plant, each containing a bin and scale. From the drum, asbestos is placed in a hydropulper, where it is mixed with water and other raw materials. The booths and hydropulpers are serviced by a 40 horsepower blower, which draws collected air through one of twelve bag filters.

The slurry from the hydropulpers is transferred first to one of five holding tanks, which keep the asbestos and other materials in a homogeneous suspended state with agitators. From there, the slurry is fed into one of five forming machines, which use air pressure to force water from the slurry and form a solid piece containing 25% water. The effluent water is collected and recycled back to the hydropulper.

The solid pieces from the forming machines are stacked on carts and fed into three tunnel ovens, where they are dried and cured. The ovens are natural gas direct fired, and recirculate most of the hot gases. After that the pieces are cooled to ambient temperatures by forced outside air, which is vented outside. No emissions can be observed from these processes.

The resulting forms are then shrink-wrapped in a 350⁰F oven with plastic bags, or are stored on racks for future wrapping and shipment.

The scrap products, materials, and asbestos bags generated by the entire process are collected and fed into a compactor, which uses a hydraulic ram, and forced into an enclosed steel container with 33 cubic yards capacity. The containers are enclosed and replaced as they become filled; they are hauled away by an independent contractor.

The Agency first conducted investigations pertinent to this matter in April and May of 1973. The Agency inspectors at that time noticed that emissions from the "A.P.C." operation described above, which involved the mixing and oven drying of graphite and nitric acid, were wholly untreated. There was graphite dust in the floor area of the plant, and on the equipment in the plant; it further appeared that such dust was escaping into the atmosphere through a window. Before treatment, the graphite particles being processed in the "A.P.C." operation had a particle size under 200 microns. Further, there were at least two citizen complaints regarding emissions from the plant, concerning the year prior to May, 1973. The Agency contends that these emissions, including a yellow-orange smoke with a hostile or nauseating odor, resulted from the "A.P.C." operation. The inspectors also noted that the plant had not applied for permits.

The Agency informed Foseco in a letter of May 23, 1973 that these investigations had revealed possible violations of Rules 103(b), 621, 622, 651, 652 and 655. Two months later, in August, 1973, Foseco purchased a vacuum sweeper for use in the plant at a cost of \$9,500.

The Agency conducted a further inspection in March, 1974, at which time inspectors noted that a new baghouse had been installed by Foseco, at a cost of \$54,000, for which no construction permit had been obtained. The inspectors also noted that dust emissions within the plant were not effectively collected by the baghouse, as evidenced by particulate buildups.

In May, 1974, Foseco contacted consultants to assist with the preparation of Agency operating permit applications.

STIPULATION AND VIOLATIONS

In the Stipulation of Fact and Settlement Agreement submitted by the parties to this case Foseco has admitted to certain violations as described in the Complaint, the Agency has dropped some of the alleged violations, and the parties have left the determination of other violations to the Board, its decision to be based on the stipulated facts. The Stipulation and Settlement here is quite clear, and the parties are to be commended on their diligence in presenting the matter to the Board in an intelligible, concise fashion.

1. Foseco admits to violations of Rule 622 and Section 9(b) of the Act as alleged in Count 1, paragraph 4 of the Complaint. This violation involved Foseco's operation without a permit.

2. The Agency withdraws the allegations as to violations of Rule 621(a), regarding processing or manufacturing asbestos-containing materials without a full time supervisor for such activity. The Agency was satisfied with Foseco's showing that such a full time supervisor had been designated.

3. Foseco and the Agency could not agree as to whether a violation of Rule 621(b) had been shown. The Agency alleged that the violations detailed above indicated that Foseco's employees had not been instructed in the proper methods of handling asbestos, or in the dangers associated with asbestos. The Agency also argued that even if such instruction were given, inspections had shown a failure to follow such instructions.

Foseco submitted Exhibit A to the Stipulation, which detailed instructions to be given all employees. The Agency contended that such instructions were inadequate.

The Agency's observations as to poor housekeeping by Foseco for asbestos and asbestos-containing materials does indeed raise a permissible inference that the instructions required under Rule 621(b) had not been given. Exhibit A, however, along with the facts agreed to in the Stipulation, overcome any inference so raised. The failure of Foseco's employees to adhere to in-plant regulations or instructions, while possibly attributable in respondeat superior to Foseco as violations of other sections, are not sufficient proof to indicate that the regulations or instructions were never issued. No violation of Rule 621(b) will be found.

4. Nor could the parties agree as to whether Foseco had violated Rule 621(c), requiring facilities to prevent employees from removing visible amounts of asbestos-containing material from the plant on clothing. Foseco contends that each employee was provided with a locker for the purpose of changing clothes, and that shower facilities were provided for its employees. (Foseco also points out certain actions taken by it since the commencement of this suit which are not applicable to the action here, although they may provide evidence as to good faith attempts at full compliance. Such actions include provision of vacuum cleaners for the removal of asbestos-containing materials from clothing.)

The Agency points out that employees were observed to be working in their street clothing, and that only one locker was provided for each employee. These matters were not controverted by Foseco.

While Rule 621(c) does not require vacuum cleaners or double lockers, the clear intent of that section is to prevent the spread of asbestos-bearing contaminants beyond the factory premises. See, In the Matter of: Asbestos Regulations, PCB R71-16, January 6, 1971, 3 PCB 437, 456. The Agency correctly points out that it is inadequate to keep asbestos-contaminated clothes together with street clothes. Further, the presence or absence of shower facilities could at best have a marginal effect on the amount of asbestos carried out on the employees' clothing. A violation of Rule 621(c) will be found.

5. The parties also disagreed as to whether Foseco had violated Rule 621(d), which requires the vacuuming or other suitable collection of asbestos-containing wastes or spills, and the adequate disposal of such wastes or spills. As described above, Foseco's wastes were placed in a sealed metal container, although not marked as required by Rule 621(d). The Agency also points out that empty asbestos bags were left unattended, and that not all spills were vacuumed immediately.

Foseco points out the purchase of its vacuum sweeper, and the fact that it has obtained a closed compactor for its waste materials since the commencement of this action. Foseco contends that these and other actions recently taken have corrected whatever technical violations of Rule 621(d) may have occurred. In its Asbestos Regulations Opinion, supra, 3 PCB at 443, the Board took cognizance of the extreme dangers which may result from contact with asbestos. The Regulations concerning asbestos are designed to minimize those dangers, and prevent any violation. Foseco will be found to have violated Rule 621(d).

6. The Agency has withdrawn its allegations of violation as regards Rule 652, which requires that exhaust air be vented for proper treatment and sampling, for the period since January, 1974, only. In January, 1974 Foseco installed a new baghouse, and stack tests, (exhibit B to the Stipulation), taken in September, 1974, indicate that sufficient treatment has been provided since January, 1974, to prevent the emission of asbestos or asbestos containing materials into the atmosphere.

The Agency has not, however, withdrawn its allegations of a Rule 652 violation for the period prior to January, 1974. While Foseco denies that there were visible emissions in violation of Rule 652 during that prior period, the absence of control and the citizen complaints noted above would indicate such a violation. (Although the citizen complaints seem more closely related to the defunct "A.P.C." operation, their presence indicates that the controls required by Rule 652 were not present. Rule 652, it must be recalled, controls not emissions themselves but the presence or absence of devices to control and monitor all exhaust air, without a requirement that such exhaust air actually contain asbestos.) A violation of Rule 652 will be found.

7. The Agency withdrew its allegations of violation as to Rule 654. Stack tests were conducted in September, 1974, indicating compliance with the applicable limitations. Rule 654 controls monitoring and reporting, and requires that factories or plants take samples and report at a frequency to be determined by the Agency.

8. Foseco admits violation of Rule 103(b)(2), in that it has operated without the required operating permits for existing sources. As a showing of good faith, Foseco is presently applying for such permits.

9. The parties cannot agree as to whether Foseco has violated Section 9(a) of the Act, which prohibits the emission or threat of emission of any contaminant, which will cause or tend to cause air pollution. With the exception of "certain days during the course of its implementation of the APC operation", Foseco generally denies such a violation. Such a denial cannot stand in the face of the citizen complaints and Agency observations stipulated to by the parties. Further, Section 9(a) of the Act makes no exception for "certain days". A violation of Section 9(a) will be found.

10. Foseco admits violation of Rule 103(a), in that it did not obtain a permit for the construction of its baghouse, described above.

SETTLEMENT

The parties have in their agreed Settlement listed quite a few steps which Foseco will take to achieve compliance with the Act and the Rules and Regulations of the Board. These are detailed and lengthy, and are set out fully in the Settlement as parts 1 through 12 of paragraph 15(a). Basically, Respondent agrees to better housekeeping procedures, employee instruction approved by the Agency, better scrap handling, provision of company-laundered work clothing, and other similar items. Additionally, Foseco will apply to the Agency for all required permits, and will report to the Agency all delays in compliance. The Board has approved similar Settlements, in cases involving asbestos, EPA v. Georgia-Pacific, PCB 74-179, January 3, 1975, and will continue to do so where compliance appears to be a major object of such settlement, as appears to be the case here. The Order will include a provision that these duties be carried out by Foseco.

The Agency has recognized that Foseco has acted in good faith to achieve such compliance, as will the Board. Foseco's plant is located in an industrial complex, and the Agency has stipulated that the rule violations set forth here were confined to the plant area. Although it has not also been stipulated to, it would seem that compliance efforts by Foseco will prevent the problems which resulted in the citizen complaints discussed above. For these reasons, the Board finds that the \$6,000 civil penalty agreed to by the parties in the Settlement Agreement is reasonable.

In accord with the findings herein, the Board accepts the Stipulation of Fact and Settlement Agreement submitted by the parties to this action. 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 Foseco is found to have violated Sections 9(a) and 9(b) of the Illinois Environmental Protection Act.
2. Respondent Foseco is found to have violated Rules 103(a), 103(b)(2), 621(a), 621(c), 621(d), 622 and 652, of the Board's Air Pollution Regulations, Chapter 2.
3. Respondent Foseco shall pay to the State of Illinois as penalty the sum of \$6,000 within 14 days of adoption of this Order. Payment shall be made by certified check or money order to the State of Illinois, to:

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

4. Respondent Foseco shall undertake certain other managerial and operational actions, in conformance with parts 1 through 12 of paragraph 15(a) of the Stipulation of Fact and Settlement Agreement submitted in this matter.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion & Order were adopted on the 14th day of February, 1975 by a vote of 4 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board