

ILLINOIS POLLUTION CONTROL BOARD

AUGUST 8, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-77
)
)
HAMMOND ORGAN COMPANY,)
a Delaware corporation,)
Respondent.)

James K. Jenks III, Assistant Attorney General, appeared for the Complainant.
Sheldon A. Zabel, Attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (EPA) filed a Complaint against Hammond Organ Company (Hammond) on February 26, 1974. Respondent is a foreign corporation organized and existing under laws of the State of Delaware and qualified to do business in Illinois. Hammond owns and operates a manufacturing plant (Plant) for the production of wood organ cabinets located at 5008 West Bloomingdale, Chicago, Illinois.

At the Plant described above, Hammond owns and operates certain equipment, including, but not limited to the following:

Nine (9) water-wash spray booths
Three (3) bake ovens (2 gas-fired and 1 steam-heated)
Wood-working equipment
One (1) wood waste-burning boiler
One (1) hammer mill
Three (3) cyclones

This equipment constitutes "emission sources" as defined by Rule 101 of Chapter 2, Illinois Air Pollution Regulations (Chapter 2) and, as such, is regulated by Rule 103(b)(2) of Chapter 2. EPA alleged that "beginning on June 1, 1973, and continuing through the filing of the Complaint herein, Respondent has caused its equipment to operate without having first obtained operating permits from the Complainant" and that the aforesaid conduct constitutes a violation of Rule 103(b)(2) of Chapter 2 and a violation of Section 9(b) of the Environmental Protection Act (Act), Illinois Rev. Stat., Chapter 111½, Par. 1009(b), (1971).

On March 6, 1974, Hammond filed a Motion to Dismiss this case on the grounds that (a) the Pollution Control Board (Board) lacks the power to impose monetary penalties, (b) the imposition of a penalty without jury trial violates the Illinois and United States Constitutions, and (c) the activities of the Board in hearing and deciding enforcement actions violate the separation of powers doctrine of the Illinois Constitution. The Motion to Dismiss was denied on March 28, 1974, by the Board for stated reasons, which have been strengthened by the recent decision of the Illinois Supreme Court in City of Waukegan v. Pollution Control Board, 57 Ill.² 170 (March, 1974).

On March 14, 1974, the Board received from Hammond a Response to Request for Admission of Fact in which it admits "that it does not have an operating permit or permits" for certain listed equipment at its Plant at 5008 West Bloomingdale, Chicago, Illinois. The equipment listed included the same items that were specified in the original EPA Complaint, except that (a) three dry spray booths were added and (b) the number of water-wash spray booths was increased from nine to ten.

A hearing was held April 15, 1974, in Chicago. The parties reported that they were working on a stipulation of facts which was not yet complete, but they anticipated that it "could be completed and agreed to within two weeks" (R.2). The parties requested that, since no members of the public were present, the hearing be continued for two weeks for the presentation of the agreed stipulation of facts which would include minor corrections and elaboration of the specific pieces of equipment involved in this case at Respondent's Plant. The Hearing Officer granted the parties' request for a continuation of this hearing for the purpose specified (R.4).

On April 26, 1974, the Board received three documents, namely, (a) the joint Stipulation of Facts, (b) Amended Complaint and a motion to file same from EPA, and (c) a Memorandum from the Hearing Officer.

The joint Stipulation of Facts indicates that the Hammond Plant began operation in 1932 and currently employs approximately 265 people. They assemble between 125 and 200 organ cabinets per day, which represent about 90 percent of the total number of cabinets utilized by Hammond in the manufacture of organs. Upon completion of the assembly work at this Plant, the cabinets or components are then shipped to other facilities of Hammond to complete the manufacturing of the organs. Hammond's Plant is located in an industrial district on the north side of Bloomingdale. The operation of the equipment involved in the subject case is described in detail, and the Stipulation of Facts also confirms (a) the addition of three dry spray booths, and (b) the increase in number of water-wash spray booths from nine to ten. Hammond transmitted to EPA on April 11, 1974 (amended April 18, 1974) a permit application for the equipment listed in the Stipulation of Facts. Respondent stipulated that it will continue to seek, at whatever price may be necessary, the necessary supplies

of exempt materials in order to comply with Rule 205(f) of Chapter 2. In mitigation, Hammond stated that "part of the reason for the delay in applying for a permit stemmed from the untimely death of its employee, Mr. Anthony Trendler, who had the primary responsibility for the preparation and submission of permit applications."

The Amended Complaint was filed by EPA on April 26, 1974, to correct minor discrepancies in the list of equipment included in the original Complaint and "to conform the pleading to the proof adduced and the equipment described in the Stipulation of Facts submitted concurrently to the Hearing Officer in this cause." In other respects, the original Complaint and Amended Complaint are similar. The Memorandum received from the Hearing Officer on April 26, 1974, indicated that the record was complete for this case and it was ready for Board action.

The Board grants the EPA Motion for Leave to File Amended Complaint. Violations of Rule 103(b)(2) of Chapter 2 and Section 9(b) of the Environmental Protection Act are established by Hammond's Response to Request for Admission of Fact in which Respondent admitted that it did not have operating permits for the amended list of equipment specified therein. A penalty will be assessed for these permit violations, with slight mitigation allowed for delay caused by the death of an employee who had been preparing the necessary permit applications. This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Illinois Pollution Control Board that:

1. Hammond Organ Company shall pay to the State of Illinois the sum of \$400.00 within thirty five (35) days from the date of this Order for permit violations established in this case. 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.
2. Respondent shall actively pursue necessary operating permits for the equipment listed herein. Respondent shall submit a compliance program to the Agency within 60 days. The program shall achieve complete compliance with Section 9(b) of the Act and Rule 103(b)(2) of Chapter 2 within 120 days of the adoption of this Order.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 8th day of August, 1974, by a vote of 4 to 0.


Christian L. Moffett