

ILLINOIS POLLUTION CONTROL BOARD

May 29, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 71-300
)
GEORGE E. HOFFMAN AND SONS, INC.,)
)
 Respondent.)

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

On December 12, 1972 this Board found Respondent George E. Hoffman and Sons, Inc. guilty of the installation and operation of mobile asphalt plants and a Washer-Tubulaire scrubber without permit in Fulton and Peoria Counties. We also found that Respondent since July 1, 1970 had operated the mobile asphalt plants in violation of the process weight limitations of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution. The Board held, however, that there was no proof that Respondent had caused air pollution under Section 9(a) of the Environmental Protection Act.

The Company was ordered to cease and desist the operation of its mobile asphalt plants unless permits for such operations were first obtained from the Environmental Protection Agency. Penalty in the amount of \$4,000 was assessed for the three permit violations and for causing particulate emissions in violation of the process weight limitations of Rule 3-3.111.

The Appellate Court of Illinois, 3rd District, sustained this Board's finding that the Company had failed to secure proper permits but vacated the finding that George E. Hoffman and Sons, Inc. had violated Rule 3-3.111. Since the monetary penalty was assessed at least in part on our determination that the Company was in violation of the process weight limitation, the assessment of monetary penalty was also vacated. The Appellate Court remanded the cause for further consideration and determination of an appropriate penalty on the three permit violations.

It was not disputed that Respondent had installed its mobile asphalt plant at Little America, Fulton County and at Princeville in Peoria County without permit as required by Section 9(b) of the Act. Nor was there any doubt that the scrubber was installed without permit in violation of Section 9(b) of the Act and Rule 3-2.110 of the Rules. Although Respondent admitted these violations it attempted to mitigate penalty by showing that it did not realize permit was required and that it took immediate steps to obtain permits when it learned of the permit requirement. The record does show that the Company went through a flurry of activity in permit and variance proceedings after it had been advised of its transgression.

At this point we seem to have rather ordinary permit violations without aggravating circumstances. The asphalt processing was conducted in a remote rural area; there were no citizen complaints; there was no finding of air pollution; and upon remand there is not even a process weight violation.

We have often stated that enforcement of the permit provisions of the Statute and Regulations is essential to the environmental control system in Illinois. It is rare indeed when a permit violation does not call for at least some monetary penalty. In this case we find that a monetary penalty in the amount of \$1,000 is appropriate.

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

ORDER

It is ordered that Respondent George E. Hoffman and Sons, Inc. shall pay to the State of Illinois by July 1, 1974 the sum of \$1,000 as a penalty for the violations of Section 9(b) of the Environmental Protection Act and Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution. 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. The \$1,000 payment shall be in lieu of the monetary penalty previously assessed on December 12, 1972.

That part of the Board Order of December 12, 1972 requiring Respondent to cease and desist the operation of its mobile asphalt plant and equipment until such time as permits for the operation are obtained from the EPA shall remain in full force and effect.

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

Christan L. Moffett