ILLINOIS POLLUTION CONTROL BOARD

September 6, 1973

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
vs.	)	PCB 72-315
FREEMAN COAL MINING COMPANY, Respondent.	)	

Thomas Cengel, Assistant Attorney General for the EPA
Richard R. Elledge, Attorney for Respondent

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

The Environmental Protection Agency filed a Complaint alleging that Respondent at its Crown Mine located near Farmersville in Montgomery County, Illinois had: caused or allowed excessive particulate emissions from its coal fired boilers (violation of Rule 2-2.53 of the Rules and Regulations Governing the Control of Air Pollution); emitted smoke which appeared to have been #2 or darker on the Ringelmann chart (violation of Rule 3-3.122); failed to abide by the time conditions of Respondent's Air Contaminant Emission Reduction Program (violation of Rule 2-2.41); and had installed air pollution control equipment without permit (violation of Rule 3-2.110).

Freeman Coal filed a Motion to Dismiss which was denied by this Board on May 17, 1973.

The evidence indicates that the Crown Mine began operations around 1950 with over 90% of its coal production going to a Chicago utility. Three coal fired boilers were used to provide hot water for the coal wash house and heat for the various buildings at the site. Emissions from the three boilers were exhausted through two stacks. The mine was closed down on September 30, 1971 and operation of the coal fired boilers ceased in August 1972.

When Freeman submitted its Letter of Intent to the Air Pollution Control Board in 1967, it portrayed the Crown Mine as "marginal" because of its age, and the difficulty of competing with strip mine operations. Nevertheless, Freeman indicated

plans for reducing emissions from the two stacks would be filed in 1968. On October 10, 1968 Respondent stated that multiclone dust collectors would be installed to reduce emissions. Work on the project was to be completed about July 31, 1969 (Complainant's Exhibit #16). The Air Pollution Control Board approved the program and sent Freeman some forms to be used in applying for an installation permit (Complainant's Exhibit #17).

On January 17, 1970 the APCB reminded Freeman of the July 1969 completion date and requested the Company to say how much longer the project would require before completion (Complainant's Exhibit #19). Respondent's reply did not explain the delay, but promised completion and operation of the first multiclone by March 1, 1970 and the second multiclone two weeks later. Respondent notified the APCB on March 25, 1970 that both multiclones had been installed and were operating.

Permits were granted for installation and operation of the "north side" multiclone on May 6, 1971 and the "south side" multiclone on May 7, 1971.

Respondent presented no evidence whatsoever to explain why the multiclones were installed 7 months behind schedule or why the Company failed to secure the required permits for over one year after the equipment was already installed. Therefore, we have no alternative but to find Freeman guilty of violating Rules 2-2.41 and 3-2.110 as charged.

Former Agency Investigator Brass testified that he had attended a smoke reading school near St. Louis and had subsequently been certified to "read smoke". Brass said he had investigated Respondent's plant on several occasions and had observed smoke densities up to and including #4 Ringelmann on February 25, 1971, up to and including #3 1/2 Ringelmann on March 4, 1971, up to and including #4 Ringelmann on April 14, 1971 and in excess of #2 Ringelmann on September 9, 1971. Agency photographs taken on these dates show dense black smoke.

We cannot determine from the evidence why the smoke emissions were dense. Again, Freeman chose to present no evidence regarding its operation or emissions on the dates in question. In its Post Hearing Brief, Freeman contends that the Agency method of obtaining evidence of Ringelmann violations deprived Freeman of due process in that smoke readings were taken "without warning or notification to Freeman". We find this argument to be without merit. Agency surveillance personnel are not required nor should they be required to notify suspects that they are about to be observed for possible violations. Freeman knew or should have known what the law required in relation to

its emissions. The Company had the option of installing a smoke monitoring device on its stacks and presenting data in rebuttal of the EPA evidence. No such rebuttal was made. Therefore, we find that the Ringelmann violations occurred as charged.

The most important (and the most troublesome) allegation was that Respondent had emitted excessive particulates in violation of Rule 2-2.53 after installation of the multiclones. The EPA calculated that Freeman's particulate emissions, after installation of the multiclones, were about 5.05 lbs. per million Btu input as compared to an allowable rate of 0.8 lbs. per million Btu input. In making these calculations the Agency rated the multiclones at zero efficiency.

The parties stipulated that the design efficiencies of the multiclone collectors were 89% and that an operating efficiency of 84.148% would bring Respondent into compliance. The Agency's use of zero efficiency instead of the design efficiency of 89% in its calculation is a key issue in this case.

Agency investigators examining the physical arrangement of the boilers, multiclones and associated duct work noted that, in addition to new duct work leading from the boilers to the multiclones, original duct work leading from the two boilers to the north side stack was still in place. Investigator Eckhardt testified that this original duct work "essentialy by-passed the multiclone and fan and went from the boiler to the stack" (R. 98). No device capable of blocking the flow through this original duct work was visible on the outside sections of the duct work and the EPA therefore took the position that the multiclones were not in use. The investigator did not attempt to view the inside of the duct work.

However, an EPA surveillance engineer testified regarding plugging problems which had occurred in the multiclones (R. 105) This, we believe, shows that the multiclones had been in use for at least some period of time and that barriers had been installed to block the flow in the original duct work. The suspicions of the Agency are not sufficient to prove that the multiclones were inoperative. If the investigator suspected that the original duct work was not sufficiently blocked to prevent the boilers from discharging directly to the stack, he should have satisfied that suspicion by asking to observe the internal section of the duct work. This he did not do. The hearing officer , in his report to this Board, noted that there was no question as to the credibility of the surveillance engineer "but his testimony left much to be desired and somewhat beclouded the EPA case".

The Agency contends that Freeman was bound by a "rule of inconvenience" to provide answers about the dual duct work. Proof sufficient to establish a prima facia case would have indeed compelled Freeman to come forward with evidence, but in light of the Agency's failure to establish a prima facia case of excessive particulate emissions, Freeman was not compelled to do anything.

The claim that the multiclones had been by-passed was not proved. Therefore, we dismiss the charge that Respondent allowed excessive particulate emissions in violation of Rule 2-253.

For the ACERP, permit and Ringelmann violations we believe a penalty of $1500 is appropriate.

ORDER

It is the order of the Board that:

1. Freeman Coal Mining Company shall pay to the State of Illinois by October 15, 1973 the sum of $1500 as a penalty for the violations found in this proceeding. 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.

2. Respondent shall cease and desist from any further violations of the type found in this proceeding.

Mr. Odell abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 6th day of September 1973 by a vote of 3 to 0.

Christan L. Moffett