

ILLINOIS POLLUTION CONTROL BOARD
October 25, 1973

ENVIRONMENTAL PROTECTION AGENCY)
COMPLAINANT)
)
)
v.) PCB 73-242
)
)
STOTZ QUARRY, INC.)
RESPONDENT)
)

MR. DALE TURNER, ASSISTANT ATTORNEY GENERAL, on behalf of the ENVIRONMENTAL PROTECTION AGENCY
MR. JOHN GUNN, ATTORNEY AT LAW, on behalf of STOTZ QUARRY, INC.

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

This is an enforcement action filed against Stotz Quarry, Inc., by the Environmental Protection Agency. The Environmental Protection Agency alleges that Stotz violated Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution.

Stotz owns and operates a limestone quarry located near Prairie du Rocher Township in Randolph County, Illinois. Process equipment alleged to contribute to air pollution includes but is not limited to, primary and secondary crushers and screening decks. A storage pile is also in question.

The Agency complaint was filed on June 11, 1973. A prehearing conference was held at which time a stipulation of facts was entered into by the parties involved. Hearing was held on September 14, 1973. At this time said Stipulation of facts was received into evidence. The only point of contention was whether or not a monetary penalty should be imposed on Respondent.

The following chronology was entered into evidence:

An initial Agency inspection of Stotz's quarry was undertaken on December 13, 1971. Sometime before August 9, 1972, Respondent engaged the assistance of a qualified consultant to aid it in any problems it might have regarding air pollution. At Respondent's request a second inspection was conducted by the Environment-

al Protection Agency, at which time data on Respondent's facilities were collected. This inspection occurred on August 9, 1972. The Agency, using said data and standard emission factors, found Stotz to be in violation of Rule 3-3.111 as follows:

Calculated Emissions - 144.2 lbs/hr.
Allowable Emissions - 47.8 lbs/hr.

On September 5, 1972, Respondent, through its consultant, disputed the fact that they were in violation, and on December 4, 1972, filed for an operating permit with the Environmental Protection Agency. A response from the Agency was received by Respondent on January 2, 1973, requesting that Respondent comply with applicable rules. On February 15, 1973, Respondent's consultant informed the Environmental Protection Agency of its compliance program. A complaint was filed by the Environmental Protection Agency on June 11, 1973. On August 22, 1973, the Stotz Quarry was found by the Agency to be in compliance with all applicable rules and regulations.

This rather lengthy chronology is a necessary part of this opinion in that it indicates a number of major points:

- A) The length of time of this action, from the initial Agency inspection to the filing of a complaint, was almost two years.
- B) That Stotz Quarry has tended to work with the Agency to comply. Indeed, the second Agency inspection was at Respondent's request.
- C) That a compliance plan was initiated prior to the Agency complaint.

The Board feels that the stipulation of facts show that equipment installed has abated the alleged violation. The issue to be decided, as was mentioned above, is that of a money penalty, if any. Written arguments have been filed by both parties. The Agency urges that an appropriate money penalty be levied for past violations. Stotz argues that no money penalty should be levied.

Taking the Stipulation of Facts, the Hearing Officer's Report, and the arguments of the parties as a whole, it is evident that there was a violation of the Rules and Regulations Governing the Control of Air Pollution. The Hearing Officer's Report states at page 2 thereof: "There appears to be no disagreement concerning the alleged violation...." Stotz's Argument filed herein states at page 1 thereof: "...the essential facts are not in dispute. The only is-

sue presented is the issue of whether or not any penalty ought to be imposed in this cause."

Stotz argues that most of the compliance program was completed prior to the filing of the Complaint herein and that a money penalty should not be levied because of the timing of the compliance program. Stotz cites cases in which no money penalty has been imposed by the Board (PCB 72-6, 71-25, 71-225, 71-51, etc.). However, this case does not warrant such a holding. The fact that Stotz is in compliance by the date of the enforcement action is not the only criteria for assessing a money penalty. The violation did occur, and the violator should be punished. Stotz should not be placed in the same or better position than the operator who achieved compliance under the Rules and Regulations as soon as required. To permit this would only encourage others to await sufficient warning of an impending enforcement action before installing necessary control equipment. It is the opinion of the Board that \$250.00 is a just money penalty for the violation of the Rules and Regulations Governing the Control of Air Pollution. The money penalty would be greater were it not for the diligent compliance with the Rules and Regulations once the Agency's inspections had pointed out the violations. Had this not been the case, a penalty in the range of \$1000 to \$1500, which is typical in such cases, would have been warranted.

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

IT IS THE ORDER of the Pollution Control Board that:

1. Stotz shall operate its dust suppression and control equipment whenever the equipment for crushing, screening and conveying are operated.
2. Stotz shall cease and desist from using its blower evacuating the enclosure around its secondary crusher.
3. Roadways appurtenant to Stotz's operations will be treated as necessary to prevent fugitive dust emissions.
4. Respondent shall pay to the State of Illinois the sum of \$250.00 within 35 days from the date 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.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 25th day of October, 1973, by a vote of 5 to 0.

Christan L. Moffett