ILLINOIS POLLUTION CONTROL BOARD
May 24, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	#72-392
	)	
AURORA METAL COMPANY, FASKURE DIVISION, a foreign corporation licensed to do business in Illinois	)	

DOUGLAS T. MORING, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
JOHN M. LAMONT APPEARED ON BEHALF OF RESPONDENT

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

A two-count complaint was filed against Respondent. Count I alleged that Respondent's Aurora operation, in the production of coated sand, caused or allowed the discharge of phenolic odors so as to cause air pollution, in violation of Section 9(a) of the Act. Count II alleged that the foregoing operation caused or allowed the discharge of sand particles and grindings into the atmosphere so as to cause air pollution, in violation of Section 9(a) of the Act. The entry of a cease and desist order and penalties in the maximum statutory amount are sought. The violations are alleged to have occurred between July 1, 1970 and the date of hearing, the first date of which was November 27, 1972.

Hearings were held in November, 1972 and January, 1973. Respondent's facility is located in the City of Aurora, in an area of mixed residential and industrial uses. It manufactures resin-coated sand used for the fabrication of shell cores and shell molds used in the foundry industry (R. 311). Respondent's facility consists of raw sand handling and storage plus parallel process lines (A and B), each of which consist of sand weighing, sand drying, sand mixing with resin, followed by a water quench, product fragmentation product screening, product cooling and storage and bagging (R. 337-340).

Possible sources of particulate emissions and phenolic odors are the two sand dryer stacks, the two mixer stacks, the stack from the Line A fluidizer bed cooler, the stack from the internal exhaust system scrubber, together with the sand storage tank vents, the conveyor system and the unloading hopper (R. 430-431). The last two areas could be considered as fugitive dust sources.

At the time of the November, 1972 hearing, the process emission control equipment then in operation included a scrubber on the internal exhaust system, which included the screens and Line B cooler (R. 379),

two cyclones on the Line A fluidizer bed cooler (R. 380) and cyclones on the sand dryers (R. 381). Prior to the January, 1973 hearing, a multiclone collector had been installed ahead of the scrubber (R. 419). Since the gravamen of the complaint is the causing of air pollution which, in turn, is defined as causing the presence in the atmosphere of contaminants of sufficient quantities and characteristics as to unreasonably interfere with the enjoyment of life or be injurious to human health, it is necessary to present subjective evidence both in support of and in contradiction of the allegations of such pollution. Of necessity, the impact that the industrial emissions have on adjacent areas, generally residential in nature, must be examined to ascertain whether, in fact, the requisite showing has been made. As in most cases of this sort, the testimony is conflicting, the odors as alleged as a basis of violation are difficult of identification and subjective interference with the enjoyment of life is often a matter of opinion.

In the present case, establishment of violation is all the more difficult because while not controlling in instances of this sort, Respondent has performed stack tests which indicate, at least so far as the particulate emissions are concerned, that the operation is not in violation of the relevant Regulations.

Likewise, its rebuttal evidence with respect to phenol emissions demonstrate quantities that, if extrapolated to Respondent's property line, might suggest that the odor emissions are not of a level to constitute an odor nuisance. However, we do not find the evidence sufficient to warrant such conclusion. Accordingly, while Respondent may have established a prima facie defense, it still becomes necessary to examine the record to ascertain what the subjective impact on the community has been of both the particulate emissions and the odor emissions to ascertain whether, in fact, a Section 9(a) violation has been established.

We believe, on the record of the instant case, the Agency has established its burden of proving a Section 9(a) violation. The testimony of the principal witnesses introduced by the Agency can be summarized as follows:

Mrs. Palmer testified that she lives directly across the street, to the south of Faskure. She notices dust 5 to 6 times a week and thinks the use of the new type unloading truck increased the frequency (R. 42). The dust is yellowish in color (R. 69) and coats siding of the house and settles in closets (R. 40). She can watch the dust coming from Faskure (R. 30). She has never complained directly to Faskure, but to the local authorities (R. 60). The odor is noticed when the wind blows from the northeast or northwest (R. 44). For the period of July, 1970 to November, 1972, the odor was noticed 2 or 3 times a month (R. 41). It smells like phenol, is disagreeable and burns the nose and throat (R. 40).

Mrs. Carrion testified that she lives directly north of Faskure and about three quarters of a city block away (R. 72). Permanent storm windows were installed to keep out dust and odors (R. 79). Dust is received from both Faskure and Meyer Material, but she can tell the difference in dust between the two (R. 82). The odor sears the nostrils and throat and smells like burning film (R. 75).

Mrs. Holm testified that she lives next door to Mrs. Palmer and has observed a cloud of material blowing directly from Faskure (R. 94). The material is a gritty substance that gets on the body and in the mouth (R. 93). Central air conditioning, and an electronic air filter were installed to keep grit out of the house (R. 101). She notices the odor about once a week (R. 99). The unloading operations, blowing under pressure from the cylindrical tank truck to the receptacle, caused the gritty particles (R. 121).

Ms. Christophersen testified that she lives directly north of Faskure, about a block away. The emission she notices is a yellow grease which gets on the windows and is hard to remove (R. 146). She also notices odors 2 or 3 times a week of varying intensity (R. 144). The odor is offensive and hurts the nose (R. 140). It smells like glue or paint and her wind vane indicates that it comes from Feskure (R. 141). She doesn't invite guests for lawn parties anymore because the odor causes coughing and sneezing (R. 148). The odor problem has occurred for the last 3 or 4 years (R. 149).

Mr. Palmer testified that he is the husband of Mrs. Palmer who testified previously. The dust emissions he notices come from the stacks on the factory building and from the unloading pit (R. 162). The dust is a very fine gritty substance (R. 161).

Mr. Boyd testified that he lives north of Faskure. He is not aware of grit but does notice odors 2 or 3 times a week (R. 178). The odor smells like burning plastics and seems to come from whitish smoke emitted by Faskure (R. 174). While in the yard in the summer of 1971, the odor caused watery eyes, headaches and a raspy throat (R. 176).

Two citizen witnesses introduced by Respondent testified that they were not bothered by dust or odors from Respondent's plant. (Resp. Exhibits 28, 29). These witnesses appear to have resided in the area only since the spring of 1972, whereas the Agency witnesses have been residents of considerably longer duration.

We believe on the basis of the foregoing testimony both an odor and particulate nuisance has been established and that Section 9(a) has been violated.Nor can we accept the somewhat cavalier argument of Respondent that while the foregoing conditions may have been established by the record, they do not constitute unreasonable interference with the enjoyment

of life. Respondent, in its brief, states that the odor emissions "only" cause a burning sensation on warm days. With respect to Gene Carrion, Respondent observes that the only ill effects she gets from the odor is a burning throat.

However, it is these very conditions that the statutory provisions are designed to ameliorate. Burning throats or burning sensations caused by industrial emissions cannot be taken as lightly as Respondent suggests. Clearly, there has been interference with the enjoyment of life. Respondent also contends that because its sand supplier responsible for the particulate emissions was an independent contractor that this legal relationship absolves Respondent of all responsibility. We cannot accept this conclusion. The entire subject of the responsibility of a company for the pollutional discharges of its independent contractor has been set forth in full in Environmental Protection Agency v. James McHugh Construction Company, #71-291, 4 PCB 511 (May 17, 1972), in which we noted that the relevant statutory provision finds liability for the allowance of air pollution, which impose affirmative duties on a Respondent going beyond those of common law to exercise care to prevent others from causing pollution. As in the McHugh case, Respondent exercises the capability of supervising and controlling the time, nature and degree of emissions from sources used by its independent contractor. This was not a single episode operation such as the anology of the taxicab passenger not being liable for the smoking exhaust. Likewise, as in the McHugh case, the Respondent appears to have recognized its obligation by endeavoring to take steps to ameliorate the condition. We believe on balance that notwithstanding Respondent's demonstrated compliance with the particulate regulations and its evidence with respect to the frequency, detectability and characteristics of the phenolic odor, Respondent has caused or allowed odor and particulate emissions in quantities and under such conditions as to constitute an interference with the enjoyment of life of people in the vicinity of Respondent's plant.

Likewise, since no estimates or particulate samplings were performed at the hopper house located at the foot of the sand conveyor where the pneumatic trucks were unloaded. These fugitive dust emissions could increase the particulate emissions beyond permissible regulatory limits.

We recognize that Respondent appears willing to reduce its odor emissions. It has applied for a permit from the Agency for two thermal oxidizers (R. 403) to be installed nine months after Order (R. 413) and according to Respondent's expert, will burn and remove phenol in the mixer exhaust (R. 451). Since up to 96% of the phenol is emitted from the mixer stacks, such control with after burners should achieve a significant overall reduction in odors.

To completely eliminate phenol emissions either additional manifolding of the scrubber and fluidizing bed exhausts to the after burner or the elimination of the phenol formaldehyde type of resin from the coating process would be required. Investigation of phenol-free resins has not produced satisfactory results. Further tests are being made. This work, if successful, would eliminate the phenolic odor problem but seemingly might create a new odor problem.

In consideration of the foregoing and particularly in recognition of steps being undertaken by Respondent to ameliorate the odor and particulate emission conditions, we will impose a relatively small penalty in the amount of $1,000 and direct Respondent to abate its odor and particulate emissions to a degree that will abate the nuisance conditions found to have existed in this proceeding.

We will grant Respondent nine months to achieve abatement of its odor emissions so as to no longer violate Section 9(a). We grant Respondent 60 days in which to abate its particulate emissions so as to no longer violate Section 9(a). We believe a substantial diminutior of particulate emissions can be achieved through better housekeeping methods and control of activities of Respondent's contractors which, in the past, have resulted in the particulate emissions above noted.

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. Penalty in the amount of $1,000 is assessed against Respondent for violation of Section 9(a) of the Environmental Protection Act in the causing or allowing of air pollution by the emission of phenolic odors and particulates as charged in the complaint and found in this proceeding.

2. Within 60 days from the date hereof, Respondent shall cease and desist the causing or allowing of particulate emissions so as to constitute violation of Section 9(a) of the Act in unreasonably interfering with the enjoyment of life and property and being injurious to human health.

3. Within 9 months from the date hereof, Respondent shall cease and desist the causing or allowing of phenolic odors as charged in the complaint and found in the proceeding so as to constitute a violation of Section 9(a).

4. Within 30 days from the date hereof, Respondent shall submit to the Environmental Protection Agency, a program which shall assure compliance with the conditions set forth in paragraphs 2 and 3 above, to be approved by the Agency. Upon approval of such program by the Agency, Respondent shall submit, in form satisfactory to the Agency, a bond in the amount of $25,000, guaranteeing installation of the equipment and compliance with all conditions as set forth in this paragraph, which bond shall provide for penalty in the amount of $10,000 in the event Respondent fails to cause reduction of its particulate emissions and odor emissions to an extent where they shall no longer constitute violations of Section 9(a) within the time periods hereinabove set forth.

Bond shall be mailed to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 24th day of May, 1973, by a vote of 4 to 0.

Christan L. Moffett