ILLINOIS POLLUTION CONTROL BOARD
March 8, 1973

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| ENVIRONMENTAL PROTECTION AGENCY | ) | |
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| v. | ) | #72-147 |
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| LITTON POWER TRANSMISSION DIVISION, a division of LITTON SYSTEMS, INC., a Delaware corporation, a wholly owned subsidiary of LITTON INDUSTRIES, INC., a Delaware corporation | ) | |

MICHAEL BENEDETTO and RICHARD W. COSBY, ASST. ATTORNEYS GENERAL, ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
WILLIAM A. HOUSTON, ON BEHALF OF RESPONDENT

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

Amended complaint was filed against Litton Power Transmission Division, a division of Litton Systems, Inc., alleging that between July 1, 1970 and the close of the record herein, Respondent, in the operation of its gear manufacturing facility located at 4401 West Roosevelt Road, Chicago, Illinois, emitted particulates in violation of Rule 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution. The entry of a cease and desist order and penalties in the maximum statutory amount are sought.

Hearing was held in Chicago on December 18, 1972. Briefs have been filed by both parties. We find the evidence offered by the Agency sufficient to establish a violation of the Regulation, as charged, and that Respondent has failed to rebut the Agency's case.

The original complaint filed in the proceeding alleged a violation of Section 9(a) of the Environmental Protection Act with respect to the causing of air pollution, in addition to violation of the specified provisions of the Rules and Regulations Governing the Control of Air Pollution. The amended complaint dropped the air pollution charge and was limited to only the violation of the particulate regulations. The evidence of violation was limited to only one gray iron cupola.

Respondent's operation is characterized as a gear manufacturing facility. Approximately 120,000 square feet of manufacturing area are leased, which facilities contain both the foundry operation, where the castings are produced using the gray iron cupola,and the

machine shop operated in conjunction therewith. The cupola operates on a four-day week schedule at approximately 1-1/2 hours per day (R. 84-90). Respondent employs 69 persons at this location and has an annual payroll of approximately $590,000. A substantial number of the employees are from minority groups.

On December 3, 1970, the cupola was sealed by the City of Chicago, presumably for violation of the City's Air Pollution Ordinance. Appeal was taken to the Appeal Board of the City of Chicago and hearings held during both 1971 and as recently as July 25, 1972. During the course of the hearings, a gas ignition system and a natural gas three-nozzle afterburner were installed (R. 106-107). Cupola operations were also reduced to a four-day week schedule from what previously had been a five-day per week schedule. An operating permit for the modified cupola was issued by the City of Chicago on September 5, 1972 and on October 18, 1972, the Appeal Board of the Chicago Department of Environmental Control issued a finding that Respondent's operation was in compliance with the Chicago Environmental Control Ordinance (Respondent's Exhibit 2). However, the state of the record does not enlighten us as to what the requirements of the Chicago ordinance are, what parameter Respondent was alleged to have violated and what specifically, so far as the Chicago ordinance is concerned, Respondent is in compliance with.

The Agency's case, limited to the emissions from Respondent's Whiting #6 gray iron cupola, is based upon computations involving the amount of process material charged per hour and standard emission factors related to an uncontrolled cupola. Based on a charge rate of 5.5 tons of metal per hour, which figures were obtained from Respondent's superintendants (E.P.A. Exhibit 1) and standard emission factors of 17 pounds of particulates per ton of metal charged (Compilation of Air Pollutant Emission Factors, U. S. E. P. A., Feb. 1972, Compl. Ex. 3), a total hourly emission of particulates of 93.5 pounds is determined. The allowable rate from the applicable rules based on the total charge of all materials including metal, coke and limestone of 6.9 tons per hour, would be approximately 20 pounds per hour (R. 33). Respondent's emissions, accordingly, are approximately 4 to 5 times that of the allowable limit. This ratio is consistent with information furnished by Respondent in permit application made in January, 1972 by Respondent for installation of its afterburner where emissions of 42.4 pounds per hour were stated against an allowable limit of 8 pounds per hour based on a presumed process weight rate of 4,000 pounds per hour (R. 36-39, 54).

The computations above specified were made on the assumption that all emissions were uncontrolled while, in fact, an afterburner has been installed. However, it is agreed by all parties that the afterburner is effective only with respect to combustible particulate emissions which, under no circumstances, would exceed over one-half

of the total emissions. Accordingly, even by the most favorable assumption from Respondent's point of view, particulate emissions continue at least double that permitted by the relevant regulations.

Complainant's testimony bears out that abatement of non-combustible particulates can be achieved only by utilization of fabric filters, mechanical cyclones, wet scrubbers or comparable types of precipitators, the technology for which has been available for many years (R. 78).

In summary, complainant has established a case of violation from Respondent's #6 cupola, based on admitted charge rate and applicable emission control factors which demonstrate a violation by the emission of particulates at least double that permitted by the relevant regulations. Respondent has failed to rebut this proof. Nothing has been introduced to establish what the particulate emission rates are under the Chicago ordinance. The City Appeal Board's order of compliance does not demonstrate that State particulate limits have been met nor does the installation of the afterburner and gas igniting system rebut the Agency's proof of violation. The system, while lessening emissions of combustible particulates and cupola gases such as carbon monoxide, does not resolve the particulate problem. We find the evidence adequate to establish violation of the Air Pollution Regulations, as alleged.

Respondent does not seriously contend that it is now in compliance with the applicable regulations but rather that it should be excused from making the installation necessary to bring it into compliance because its facility is located in one of the possible paths of the Crosstown Expressway. Respondent argues that since the facilities in which its operations are located might be acquired by condemnation, it should not be obliged to make the extensive expenditures necessary to bring its operation into compliance with the law. It argues that if such compliance is required, it will in all probability cease its operation at the present location, which will cause the unemployment of its entire working crew and resulting hardship to all concerned.

We do not find the Respondent's position meritorious on the record of the present case. First, the record is devoid of any evidence as to what the costs of compliance would be. There is some speculation that the necessary abatement equipment would cost approximately $150,000, but this speculation is unsupported by any tangible evidence as to what the "total job" of pollution control would entail. (R. 253). The most that is suggested is that a study be made to determine the extent of violation and the nature of what control devices would be necessary (R. 261). Notwithstanding Respondent's earlier skirmish with the City of Chicago, it does not appear to have taken any stack tests nor ascertained the extent to which it is polluting the air, either before or after the installation of its afterburners. The evidence indicates that Litton Industries, Inc. has 145 business

locations in the country (R. 273), including several in the Chicago area. Nothing appears in the record with respect to what efforts could be made to accommodate Respondent's employees in the event of a shutdown, which would be the case whether condemnation took place or Respondent voluntarily ceased business. Lastly, and perhaps of greatest concern in endeavoring to resolve the present proceeding, is the uncertainty of the alignment of the Crosstown Expressway and whether, in fact, the Expressway will even be built.

Respondent first became aware of the possibility that its facility was in the path of the expressway as early as 1968. The Board will take judicial notice of the fact that the proposed route of the Crosstown Expressway has changed many times over the past five years, and that substantial doubt exists whether it will be constructed at all. In any event, this Board cannot adopt as a legal principle the doctrine that all facilities within any of the possible routes of the Crosstown Expressway are exempt from compliance with the Air Pollution Regulations until the alignment is definitively resolved. This subject has been a matter of contention for at least five years and we cannot give dispensation to permit continuing violation of the law based on the speculation inherent in the present case. This is particularly true in consideration of the facts before the Board in this proceeding where the nature and extent of the emissions, the equipment necessary to achieve compliance, the cost of abatement equipment and the date of acquisition by the condemning authority, are all unknown. Furthermore, we are not unmindful that if abatement equipment is installed and the facilities acquired by a condemning authority, consideration must be given to the expenditures so made when an award for the acquisition is determined. Tax relief is also available for such installation.

On the state of the record, we will not allow exemption of Respondent from compliance with the law. Such a rule would be available to all industries and operations located within any of the various expressway routes heretofore considered, which would have the dual effect of giving all of these industries an undue economic advantage and at the same time, allow unabated pollution from a substantial area of Chicago, pending the resolution of an issue which, at the present time, seems unlikely to be resolved in the foreseeable future. We find Respondent to have violated Rule 2-2.54 and assess a penalty in the amount of $2,500 for said violation. This penalty is asserted principally in consideration of Respondent's failure to take affirmative steps in the face of its acknowledged awareness of violation of the relevant Rules. We find the violations to have continued from July 1, 1970 to the date of the hearing.

We will order Respondent to submit a program for control of its pollutional discharge within 60 days from the date hereof, and to

From the foregoing provisions, the following rules may be discerned. First, odor is a contaminant; second, odors that unreasonably interfere with the enjoyment of life or property constitute air pollution; and third, air pollution is prohibited whether caused by odors emanating from one source alone or whether multiple sources in combination create this result. The difficulty in establishing a violation of the Act in areas characterized by a multiplicity of odor-generating facilities is demonstrated by the varying and competing odors that may all affect one receiver simultaneously. A frequently raised contention is that a certain amount of latitude must be recognized in every industrial area with respect to odor emissions, and persons who reside near such areas are compelled to share this burden. In cases of this character, the Board does not adopt the view that an absolute prohibition of odor emission is directed by statutory mandate. Of necessity, it must take a stance that only those odors which unreasonably interfere with the enjoyment of life are proscribed. This, in turn, becomes a function of many considerations and requires an analysis of the degree of impact on the individuals comprising the community resulting from the odor emissions and the economic reasonableness and technical feasibility of odor abatement.

While the evidence in the instant case is somewhat conflicting in this respect, we believe the Agency has established its burden which has not been rebutted by testimony of Respondent. The fact that some of the witnesses affected are not permanent residents of the area does not militate against this conclusion. Since what annoys a person or unreasonably interferes with his enjoyment of life is, by definition, highly subjective, it is not surprising that the same odor may be obnoxious to one person, while at the same time a subject of indifference or perhaps even enjoyment, to another. Likewise, persons who have been subjected to continuing emissions over a substantial period of time may have developed a tolerance, consciously or unconsciously, which would not be characteristic of a person who is either transient or unrelated to the activities of the area, giving rise to the odors.

Testimony of three residents of Sauget and four students from Parks Air College in Cahokia supported the contentions that the emissions complained of were traceable to Respondent's plant, caused severe discomfort, difficulty in breathing, preclusion of outdoor activities and in some instances, interfered with sleep. Mr. Tracy, who lives one block south of the plant, complained of the rubber smell stating "It stinks. I have been woke up in the middle of the night with the bedroom windows open and I would get up and close them. I'd get to coughing". (R.26). He testified that he could not plan family barbeques or the use of the yard. "I have barbequed in my yard before and I stopped barbequing when the stuff moved in -- we had to go into the house and close the house up." (R. 36). The odors were noticed in 1971 and 1972. Mrs. Phillips who

lives two blocks north of the plant has lived at this location for eleven years (R. 46). She testified that during 1971 and 1972, she smelled an odor comparable to burnt rubber. When the rubber odor was observed, she felt nauseous, frequently requiring the closing of windows. William Schmidt lives approximately 450 yards southeast of the plant. During 1971 and 1972, he detected odors comparable to "an inner tube on fire", which odor was observed as recently as November 14, 1972. He testified that he observed the rubber smell at least once a week over the last two years (R. 76). Students at Parks Air College (R. 101 and following) testified that the emission of odors traceable to the plant interfered with the ability to engage in outdoor athletics (R. 104), interfered with the ability to study, ruined appetite (R. 105) and interfered with sleep. Mike Sandell testified to an odor characterized as "the smell of hot, burning rubber"(R. 123), observed on October 18, 1972 and that comparable odors have been observed as frequently as 7 or 8 times a month. He testified that the odor created a feeling of depression interfering with appetite and interfered with school activities (R. 125). Thomas Zuchowski testified that there were three weeks during the period of 1971 and 1972 when the smell of burnt rubber could be detected. He traced the odor directly to Respondent's plant (R. 135). He testified that the odors interfered with the conduct of athletic activities and his ability to sleep. (R. 136, 142). The statute does not require that sickness, infirmity or permanent injury result from odor emissions. It is the very activities from which these witnesses were foreclosed that constitute the unreasonable interference with the enjoyment of life, nor does the absence of multiple witnesses testifying to the same matters negate a demonstration of violation. Most witnesses introduced by Respondent acknowledged the presence of odors emanating from Respondent's plant on occasion. However, they disagreed as to its intensity and impact.

We believe the Agency has adequately established its burden in proving that Respondent has caused air pollution. The remaining question is what should be done about it.

Respondent is embarking on a major replacement program which will entail the installation of new process equipment. While this equipment is not being installed primarily to achieve odor abatement, the record strongly suggests that when this renovation program has been implemented, many of the present sources of odor emissions will be eliminated.

The program anticipates investment for equipment of approximately $270,000 and an additional annual operating expense of approximately $70,000 (R. November 29, 1972, R. 148-149). The program includes the elimination of the Sargeant dryers presently used and their replacement with a steam-heated conveyor which would lessen the air flow from the dryers and eliminate odors such dryers might produce by scrubbing the conveyor air before its release. The installation of a second dynamic Devulcanizer would eliminate 10 wet digesters as odor sources and replace the existing air conveying system used to cool and transport hot rubber stock from the devulcanizer to storage

bins with a water-cooled conveying system. According to Respondent, the new system would eliminate the escape of small traces of oil into the atmosphere and end whatever resulting odors such oil traces might produce. The Company anticipates that it would require ten months from the receipt of necessary installation and operating permits for the program to be completed and in operation.

At the present time, the necessary permits for this program have not been received, partly as a consequence of the Agency's concern that the program, as proposed, would not satisfy the provisions of Rule 205(b) of the Board's new Air Pollution Rules with respect to the emission of organic materials. This matter is not directly in issue in the present case and nothing appears in the record other than the statement of an Agency witness that this concern has precluded the issuance of necessary permits (R. 194). We trust that this matter will be the subject of further discussion between the parties and urge that the Agency fully apprise the Respondent as to the exact nature of its concern in this respect.

Rather than direct the submission of a definitive program for odor abatement as we have done in other cases, (see Environmental Protection Agency v. Tee Pak, Inc., #72-81, (November 8, 1972) PCB ; Environmental Protection Agency v. Union Carbide Corporation, #72-54 ( ) PCB ; Environmental Protection Agency v. Mystik Tape, A Division of Borden, Inc., #72-180 (January 16, 1973) PCB , we will direct the parties to take immediate steps to effectuate the improvement and replacement program above described. It would appear from the record that the modification and installation of new process equipment will go far to alleviate the odor condition that has characterized the operation to the present date.

We find that Respondent has made installation of air pollution abatement equipment without the necessary permit in violation of Section 9(b) of the Act and Rule 3-2.100 of the Rules. We find that Respondent's operation of its rubber reclaiming facility has emitted odors which have caused air pollution as defined in the Act between January 1, 1970 and the commencement of hearings. We assess a penalty in the amount of $2,000 for the violations aforesaid. We direct the parties to take immediate and definitive steps to process the permits necessary to effectuate the improvement program described herein and direct the Agency to report back to the Board within 60 days from the date hereof the status of the permit applications, together with its analysis of whether the odor emissions existing will be substantially abated as a consequence of the improvement program anticipated. We shall reserve jurisdiction of this matter for such other and further orders as may be necessary in consideration of the foregoing.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of $2,000 is assessed against Midwest Rubber Reclaiming Company for violations of Sections 9(a) and 9(b) of the Environmental Protection Act and Rule 3-2.100 of the Rules, in the causing of air pollution and the installation of a Mikro-Pulsaire collector without a permit, as found herein. Penalty shall be paid by certified check or money order payable to the State of Illinois and sent to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. The Agency and the Respondent shall take immediate steps to process the permit applications with respect to Respondent's improvement and replacement program as delineated in this Opinion. The Agency shall report to the Board within 60 days from the date hereof, the status of the permit application and whether such improvements will abate the odor nuisance found to exist.

3. The Board retains jurisdiction for such other and further orders as may be necessary including the possible entry of a cease and desist order with respect to the causing of odor nuisance, the direction to submit an odor abatement program should such further order appear necessary and the entry of a bond to assure compliance with all programs, either permitted or directed to abate odor emissions.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 8th day of March, 1973, by a vote of 3 to 0.

Christan L. Moffett