ILLINOIS POLLUTION CONTROL BOARD
December 12, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#71-300
v.	)	
	)	
GEORGE E. HOFFMAN & SONS, INC., a Corporation	)	

PRESCOTT E. BLOOM, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
MICHAEL O. GARD, OF SWAIN, JOHNSON & GARD, APPEARED ON BEHALF OF RESPONDENT

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

Complaint was filed by the Environmental Protection Agency against George E. Hoffman, Inc., a corporation, Respondent, alleging that Respondent owns and operates a Heatherington and Berner mobile-type asphalt plant, Model No. 1770, and that on or about July 1, 1970, Respondent constructed, installed and operated the mobile asphalt plant near Little America, Fulton County, Illinois, and that on or about May 13, 1971, Respondent constructed, installed and operated the same mobile asphalt plant near Princeville, Illinois, both installations having been made without obtaining permits from the Agency, in violation of Section 9(b) of the Act. The complaint further alleges that since July 1, 1970, Respondent has operated the asphalt plant in violation of process weight limitations as provided by Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution and that on August 6, 1971, Respondent constructed, installed and operated a Washer-Tubulaire scrubber, which equipment is designed to prevent air pollution, without obtaining a permit in violation of Section 9(b) of the Act and Rule 3-2.110 of the Rules. Lastly, the complaint alleges that since operations began at the Princeville location on or about May 31, 1971, Respondent has operated the asphalt plant so as to cause, threaten or allow the discharge of contaminants so as to cause air pollution, in violation of Section 9(a) of the Act.

Hearing was held on the complaint in Peoria on September 26, 1972. There is no dispute that Respondent installed its mobile asphalt plant at the Little America and Princeville locations without a permit as required by Section 9(b) of the Act, nor is there any dispute that the scrubber was installed without a permit in violation of Section 9(b) of the Act and Rule 3-2.110. The operation and installation without a permit is admitted by counsel for Respondent (R.5, 6 and 7) and conceded by Respondent's Executive Vice-President (R.114, 116) and its comptroller (R.157). Respondent endeavors to

be relieved of liability for violation of these sections on the basis of conversations had with representatives of the old Air Pollution Control Board before passage of the Act and with Agency personnel after its passage. It is not clear from the record precisely what these conversations consisted of, or why they would constitute a defense to any of the violations charged. In several conversations with Air Pollution Control Board personnel, information was sought with respect to scrubbers and permit procedure (R. 108-114). In another conversation with Agency personnel, the matter of forms for permits was discussed (R.140-41). In another conversation with Agency personnel, the possibility of seeking a variance to enable operation at the Princeville site without control equipment was considered (R. 86, 143). With respect to the latter conversation, it appears to be Respondent's suggestion that Agency personnel implied that the variance would be favorably considered (R.143-144). The variance discussed related only to the possibility of operating without control equipment and in no way would serve as a defense for operations at either of the locations without a permit. Furthermore, the records of the Board disclose that a variance was sought by Respondent in case George E. Hoffman, Inc. v. Environmental Protection Agency, #71-204, with respect to operation at Princeville without installation of control equipment. This variance petition was withdrawn on motion of Respondent, by our Order of September 2, 1971. In the present proceeding, Respondent admits that the installation of the abatement equipment when made was done without a permit and no variance was granted for any period of operation without one.

We find that Respondent, by its operations at Little America and Princeville without a permit, violated Section 9(b) of the Act. We find that Respondent's installation of the Washer-Tubulaire scrubber without a permit, being equipment designed to prevent air pollution, violated Section 9(b) and Rule 3-2.110 of the Rules.

Respondent's contentions by way of defense to these violations are singularly unpersuasive. The record does not disclose any deception or misleading by personnel of the old Air Pollution Control Board or the Environmental Protection Agency that could in any way, estop the Agency from pursuing its complaint, or which would constitute a defense to the violations asserted. Respondent was advised of the relevant regulations and statutory provisions concerning the granting of variances and the processing of permits. Respondent chose to pursue the variance route as to the Princeville operation and then withdrew the petition, once filed. Discussion with Agency representatives can in no way be equated to the granting of a variance nor serve as a defense for failing to fulfill the legal requirements of the statute and the regulations.

The record contains no evidence upon which we could find Respondents to have violated Section 9(a) of the Act with respect to causing, or tending to cause air pollution, nor does it appear that the Agency made any effort to prove this allegation. What little evidence is in the record discloses that the Princeville area is sparsely settled and there is no evidence of nuisance or impact on the community from the emissions caused by Respondent's operation.

The only issue in dispute is whether Respondent has violated the particulate emission regulations of Rule 3-3.111. Proof of violation was made by Agency witnesses based upon standard emission factors contained in Public Health Service Publication No. 999-AP42 (R.31-34). In determining particulate emissions from Respondent's operation, two different process weight rate figures are used in computation. A figure of 480 tons per hour was used in the first instance, based upon a statement made by Respondent's plant superintendant to an Agency witness that this figure represented the process weight rate of the asphalt plant (R.15). Later permit applications filed by Respondent with the Agency for the Princeville operation, specified the process weight rate of the plant to be 360 tons per hour. (EPA Ex. 2(e)). With a process weight rate of 480 tons per hour, 384 pounds per hour of particulates would be emitted against an allowable maximum hourly emission contained in the Regulations of 68.4 pounds per hour. With a process weight of 360 tons per hour, emissions would be 288 pounds per hour against an allowable emission of 64.5 pounds per hour. Both compilations presuppose the absence of a scrubber (R.48-49, EPA Ex. 2(e)). It is manifest that with either process weight rate, that which the superintendent indicated to be appropriate or that which was used by Respondent in the permit application form, substantial violations of the particulate regulations are demonstrated.

Respondent endeavors to counter this finding by contending that the plant only operated at 60% of its maximum capacity (R. 163-168). It is not clear what Respondent is endeavoring to show by this testimony, whether the plant only operated 60% of a normal working day or whether the plant operated at only 60% of its rating. In either event, the evidence is inadequate to refute the conclusions reached on the basis of the use of standard emission factors. To the extent that the evidence would have any probative value, it was refuted by the testimony of Environmental Protection Agency witness Otto Klein (R.214) who stated that when the plant was in operation, it was operating at a rate of 360 tons per hour.

Respondent appears to misunderstand the interrelation of the process weight rate and the use of standard emission factors when a stack test is not utilized. Allowable emissions are not computed on the basis of totality of emissions over a given period of time

on a subjective basis, but what the rate of emissions are at the time the facility is actually in use. If, when operating the asphalt plant is in fact, operating at a rate of 360 tons per hour, the duration of this operation is irrelevant. Process emissions are premised on the rate during the period of operation and compliance or violation is based on this computation and not on the total length of time the operation has taken place or the total weight of particulates that have, in fact, been emitted, absent a stack test. Any other rule would enable an emitter to cease operation every 59 minutes and contend that he never violated an hourly rate.

In the first case to come before the Board, we held that the use of standard emission factors was a proper method for determining violation or compliance with process weight limitations. Environmental Protection Agency v. Lindgren Foundry Co., #70-1, 1 PCB 11, (September 25, 1970). In so holding, we stated:

> "...it is standard practice to prove a violation by the use of emission factors recognized by experts on the basis of experience with similar equipment. To require an expensive stack test in the absence of any testimony suggesting that the standard emission factors are inaccurate or that the equipment in question is unique would be to impose an unreasonable burden on the enforcement process. The respondent is free to introduce stack test results to rebut the evidence of estimated emissions. But in the absence of any rebuttal, the Agency has proved its case..."

In Environmental Protection Agency v. Norfolk & Western Railway, #70-41, 1 PCB , (May 26, 1971), we held that when a violation was based upon the use of standard emission factors, the Respondent could rebut this finding by introduction of evidence showing that the circumstances relating to Respondent's operation, were different from those which were assumed to maintain under the conditions when the standard emission factors were used. In the Norfolk and Western case, Respondent successfully demonstrated that the standard emission factors did not give an adequate picture of the particular operation because of demonstrated differences in fuel and actual test results performed on equipment similar to that involved in the case. No comparable showing has been made by Respondent in the present case nor has any showing been made at all to rebut the conclusion of violation based on the use of emission factors. Respondent's unsupported speculation that it was operating at 60% of maximum capacity is insufficient to rebut the finding of violation by the use of standard emission factors. We do not by this holding say that there could neve be any circumstances when definitive proof of a derated operation might not serve to counter a violation based on the use of standard emission factors, although allowable emissions generally decrease

with a decrease in actual process weight rate. What we do say is that Respondent in the present case has failed to meet its burden in this respect. Cf. Environmental Protection Agency v. Central Illinois Light Co., #72-83, 5 PCB , (November 8, 1972).

We find that Respondent has violated Section 9(b) of the Act by failing to obtain permits for its operations at the Little America and Princeville locations as alleged in the complaint and has violated Section 9(b) of the Act and Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution by installing and operating a Washer-Tubulaire scrubber without a permit as alleged in the complaint. We find that Respondent's operations at the two locations involved prior to the installation of the scrubber constitute a violation of the process weight limitations of Rule 3-2.111 of the Rules aforesaid.

We find the Agency has failed to sustain proof of violation by Respondent of Section 9 (a) of the Act by causing, or tending to cause, air pollution, and hold Respondent not liable for violation of this section.

We impose a penalty against Respondent in the amount of $4,000 for violation of the provisions of the statute and rules above set forth. While express proof of air pollution as defined in the statute is lacking in the present case, there is no question that an asphalt plant is one with a high degree of potential in this respect, and it is inexcusable that Respondent should have operated during the years involved without obtaining permits from the Agency. It is only by the permit process that the proper location and operation of a plant of this character can be determined and adequate equipment be installed to achieve compliance with the law. Cf. Environmental Protection Agency v. Southern Illinois Asphalt Company, #71-31, 1 PCB 665 (June 9, 1971).

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

IT IS THE ORDER of the Pollution Control Board:

1. Respondent shall cease and desist the operation of its mobile-type asphalt plant and all equipment installed in conjunction therewith, without obtaining proper permits for such operations from the Environmental Protection Agency.

2. Penalty in the amount of $4,000 is assessed against Respondent for violation 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, both with respect to failure to obtain permits as charged in the complaint and for violation

of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution for causing particulate emissions in violation of the process weight limitations contained in said Rule, as charged in the complaint. Penalty shall be paid by certified check or money order to the State of Illinois by January 16, 1973, and sent to: Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 14th day of December, 1972, by a vote of 5 to 0.