

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 72-210
)
PROCTER & GAMBLE MANUFACTURING)
COMPANY, INC.)
 Respondent.)

Lee A. Campbell, Assistant Attorney General for the EPA
Thomas McMahon, for the Respondent.

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

The Environmental Protection Agency filed a complaint against Procter & Gamble Manufacturing Company, alleging that the Company had violated the Environmental Protection Act and the Rules and Regulations Governing the Control of Air Pollution, by failing to obtain a State permit prior to the Company's construction of new boilers at its Chicago manufacturing plant. The Procter & Gamble project, costing five and one-half million dollars, was to convert its plant from the use of coal-fired boilers to the use of gas-fired boilers with oil stand-by. Preliminary work began in August, 1969, but actual construction on the three boilers took place between March 1, 1971 and December 31, 1971. The conversion from the use of coal to the use of gas and oil resulted in a reduction of the emission of air contaminants into the atmosphere. There have been no complaints with respect to emissions from Respondent's boilers since the cessation of coal burning on November 15, 1971.

Respondent filed a Motion to Dismiss the Complaint on the grounds that: (1) Two of the boilers (#10 and #11) which were converted from coal to gas and oil did not call for the construction of new equipment and therefore the statute was not applicable. (2) A permit for construction of the new boiler (#12) had been issued by the State on April 18, 1972, about one month before the EPA filed its Complaint, and therefore the matter was moot as to that boiler. (3) Planning for the project was commenced prior to the July 1, 1970 enactment of the Environmental Protection Act, at a time when Chicago industry was exempt from State regulation. (4) The Complaint alleging failure to obtain a State permit was duplicitous and frivolous since a permit had, in fact, been obtained from the Chicago Department of Environmental Control.

Subsequently, the parties filed their Stipulation which disposes of factual issues. The Stipulation states that new equipment was installed in the converted boilers (#10 and #11) and that boiler #12 was entirely new. Clearly the construction was of a type which is prohibited in the absence of a permit. Applications for permits were not filed by Respondent until after construction had been completed on all three boilers, and the Respondent had been contacted by Agency investigators. Late compliance does not moot the issues in our opinion. To hold otherwise would reduce voluntary compliance with the law, and interfere with the State's proper and timely review of projects affecting environmental quality.

EPA vs. American Generator & Armature Company, PCB 71-329, disposes of the issues raised by Respondent regarding State authority. Prior to the enactment of the Environmental Protection Act on July 1, 1970, it was not necessary to obtain a State permit for installation of new equipment within the City of Chicago, since that area had been exempted from State requirements. A City permit was sufficient. In the American Generator case, we held that State permits have been required for construction of new facilities in Chicago since July 1, 1970. The Opinion, announced January 6, 1972, indicates that penalties will be imposed for future violations of the rule. No penalty was imposed in that case, however, upon American Generator & Armature Company.

Here, Respondent Procter & Gamble claims it should receive similar treatment since its transgression occurred prior to our announcement of the rule on January 6, 1972.

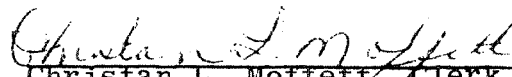
The EPA recommends a \$500.00 penalty.

Because of the precedent established in American Generator, we decline to impose a penalty upon Respondent Procter & Gamble Manufacturing Company, Inc. The violations took place before our decision of January 6, 1972 gave final notice of the need for State permits in construction of Chicago facilities. We also give due weight to the fact that Respondent did obtain a City permit and did reduce air pollution in the City of Chicago.

The Board finds that the permit provisions of the Environmental Protection Act were violated and hereby orders that this proceeding be closed with no remedial or penalty provisions.

Mr. Dumelle dissents.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 15th day of August, 1972 by a vote of 4-1.


Christian L. Moffett, Clerk
Illinois Pollution Control Board