

ILLINOIS POLLUTION CONTROL BOARD
November 15, 1971

LLOYD A. FRY ROOFING COMPANY)
)
 v.) PCB 71-4
)
 ENVIRONMENTAL PROTECTION AGENCY)
)
 REV. LOUIS HEMMERICH, ET AL)
)
 v.) PCB 71-33
)
 LLOYD A. FRY ROOFING COMPANY)

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by Mr. Lawton):

On October 14, 1971, we entered an order in the above consolidated proceeding as follows:

"IT IS THE ORDER of the Pollution Control Board:

1. That Lloyd A. Fry Roofing Company cease and desist emissions from its Summit operation until such time as air pollution abatement equipment has been installed and is properly operating, which equipment shall bring Fry's emissions within the particulate regulations, as set forth in the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.11 and 3-3.111.
2. Fry shall advise this Board when such installation has been completed. This proceeding shall remain open and the Board shall conduct a further hearing not less than 30 nor more than 60 days after notice of the installation of said air pollution abatement equipment in order to ascertain whether odors being emitted by Fry's operation have been abated as a consequence of the air pollution control equipment installed. Such further orders shall be issued by this Board as are appropriate in consideration of the hearings.
3. Penalty in the amount of \$50,000 is assessed against Fry for violations of the particulate emissions provisions of the Rules and Regulations Governing the Control of Air Pollution, for failure to file a Letter of Intent and Air Contaminant

Emission Reduction Program as required by the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.3 and 2-2.4, and for causing air pollution as defined within the Environmental Protection Act, Section 9.a."

On November 12, 1971, we received from respondent, Lloyd A. Fry Roofing Company, a Petition for Rehearing and a separate Motion to Stay the Order and Decision of the Board of October 14, 1971. The Petition for Rehearing is denied. The Motion to Stay the Order of the Board is granted with respect to the assessment of the penalty subject to the conditions hereinafter provided, and is denied in all other respects.

The Petition for Rehearing is premised on the failure of the Board to enter an Order establishing a briefing schedule and permitting oral argument, and on its failure to enter a separate Order on complainant's Motion to Reopen the case. However, it is manifest that the October 14, 1971 Order of the Board is dispositive of all issues raised in Fry's Motion. The Board chose not to await the filing of briefs for the rendering of its decision, but took the case on the record. Furthermore, since no Brief was filed by complainant, there was no occasion for respondent to file an Answering Brief. Likewise, the Board chose to proceed without hearing oral argument.

Nor is respondent in any position to complain because of the Board's failure to reopen complainant's case. Indeed, respondent filed an Answer to the Motion to Reopen the complainant's case praying that the Motion be denied. In this respect respondent has prevailed and cannot now challenge the action of the Board in compliance with its prayer.

Respondent's Motion to Stay the October 14, 1971 Order of the Board was filed pursuant to Supreme Court Rule 335 which governs procedure where judicial review of our proceedings is sought. While we do not accept the legal argument of respondent in support of its Motion, we do stay our Order with regard to the assessment of penalty on condition that a bond to secure payment of the penalty in the event of an adverse judicial decision is filed with the Environmental Protection Agency within 15 days after receipt of this Order. As we said in Spartan Printing Company v. EPA, PCB 71-19, dated October 14, 1971:

". . . [W]e see no point in requiring the money to be paid now if it may have to be repaid after judicial review. The purposes of the order will be as well served by later payment if the appeal fails."

However, we decline to stay the other portions of our Order. If in fact respondent is proceeding with an Air Pollution Abatement Program and the installation of suitable equipment as alleged, and such equipment brings respondent's operation into compliance with the law, it has nothing to fear from either the Board or the Environmental Protection Agency by having complied with our Order. Further delay in this regard would only continue the obnoxious burden to the community caused by respondent which was the basis of the original Order of the Board.

IT IS THE ORDER of the Pollution Control Board:

1. The Petition of Lloyd A. Fry Roofing Company for Rehearing is denied.
2. The Motion of Lloyd A. Fry Roofing Company to Stay the Order and Decision of the Pollution Control Board of October 14, 1971, is granted as to the penalty provisions of the Order (¶ 3) on condition that a bond to secure payment of the penalty in the event of an adverse judicial decision is filed with the Environmental Protection Agency within 15 days after receipt of this Order, and is denied in all other respects.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order on this 15th day of November, 1971.


Christan Moffett,
Acting Clerk