

ILLINOIS POLLUTION CONTROL BOARD  
March 7, 1972

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 v. ) # 71-297  
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 GENERAL IRON INDUSTRIES, INC., )  
 et al. )

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 v. ) # 71-335  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

Mr. James I. Rubin, Assistant Attorney General, for the  
Environmental Protection Agency

Mr. Harry A. Young, Jr., Neistein, Richman, Hauslinger & Young, Ltd.,  
for General Iron Industries, Inc., et al.

Opinion of the Board (by Mr. Currie):

General Iron operates a secondary metals facility in Chicago, at which scrap aluminum, zinc, and other metals are reclaimed. The Agency's complaint charged the company with causing air pollution under the Environmental Protection Act; with smoke emissions exceeding the applicable Ringelmann standard; and with particulate emissions above those permitted by the process weight table of the Rules and Regulations Governing the Control of Air Pollution. General Iron responded with a variance petition seeking time in which to make certain new control installations, without conceding any violations. The parties entered into a stipulation governing a number of factual issues and agreed upon a program of future improvements. They did not agree, however, as to whether or not there had been any violations. The company argues there were none; the Agency argues there were and asks a penalty of \$3000. Depositions appended to the stipulation are offered as the basis for our determination on this issue. We find an air pollution violation and impose a penalty of \$1500 for reasons that follow.

The Ringelmann count was withdrawn by the Agency and need not detain us. On the process weight issue, the Agency has made calculations on the basis of standard emission factors in an effort to demonstrate violations (see Ex. 8 to Hoffman deposition, p. 2). Such calculations, in the absence of actual tests, are acceptable proof. See EPA v. Lindgren Foundry Co., #70-1 (Sept. 25, 1970).

In the present case there are two kinds of furnaces, reverberatory and sweat furnaces. There are three of the latter, which are equipped with afterburners. The emission factors used were based upon the assumption the furnaces were not equipped with control equipment (Hoffman deposition, p. 122), while the evidence is that a portion of the emissions in this case are grease and other combustibles (id., pp. 115, 117) that would be to some extent reduced by the afterburners (Ex. 8, supra). The Agency thus has not proved these furnaces violated the process weight table. The single reverberatory furnace is uncontrolled, and the calculations show emissions very slightly in excess of those permitted (at actual production rates, 5.38 lb/hr emitted, 4.76 lb/hr allowed. Ex. 8, supra). While this is enough for a violation and justifies a control program, we do not think it cause for a money penalty, since the violation is small, since the law has been applicable to Chicago sources only since July 1970, and since General Iron now has agreed to an acceptable control program.

But the evidence firmly establishes that persons working in the neighborhood have been subjected to significant nocturnal nuisances as the result of General Iron's activities. While normal operations as observed by a state inspector appear not to cause a nuisance (Hoffman deposition, pp. 53-54, 87-88), a construction company employee working nearby testified to the frequent existence of a severe nuisance attributable to General Iron:

A No, I began wondering in March what is all this stuff that is on these cars. I brought my Buick up there one night and it was a white car and it was all covered black. . . .

Q Now the situation then with these cars covered, you mean you would come back from the job in the morning and find your car covered, is that it?

A Sometimes it would be landed on there when we left.

Q And how many times would it land on there when you left?

A Well, depending on the way the wind was blowing. It doesn't blow the same way all the time, but whenever it blows from their way our way, why, the cars get covered.

Q Do you remember how many times that occurred?

A Two or three nights a week.

Q And this would be two or three nights a week for how many weeks?

A Continuous every week.

Q Now can you describe what you saw?

A I saw the flama coming up out of the chimney and they had at least one going out of the stack--at least one going when I was standing there looking at it, and you could feel the stuff in the air landing. It was like being in a dust storm. You could feel the stuff. I came back the next morning and there was the truck all covered with black dust, fly ash. . . .

Q When was the last time you had the truck there?

A Saturday. We had to use dry rags and dry terry towels to rub the film off and it just still wouldn't take it off.

(Crampton deposition, pp. 11, 22-23).

These episodes occurred since March, 1971, when the employee began working in this area. Another employee of the same firm corroborated this evidence:

"A. . . when my car was parked when they burned that stuff at night all that grease film would just be on it in the morning, from the burning at night. . . . When that thick smoke comes out of those chimneys there you can't even see or you can't breathe it is so thick" (Hacker deposition, p. 12). See also id., p. 17.

These witnesses surmised that the cause of these emissions might be the burning of insulated wire.

We cannot determine the specific cause and need not. It is enough that significant interference with nearby persons resulted from General Iron's activities and that there is no proof the interference was unavoidable. Indeed the fact that normally the plant causes no nuisance, as observed by inspectors, suggests the nuisance was avoidable, and the company's compliance program makes that clear. We find air pollution was caused in violation of the statute. We impose a penalty of \$1500 because of the seriousness of the nuisance.

The control program agreed upon by the parties is quite acceptable. A baghouse to meet the particulate regulation will be installed and compliance achieved by July 31, 1972. In the interim the company agrees not to burn insulated wire; to limit its production so as to reduce emissions;; to file a \$150,000 bond to assure performance; and to file monthly progress reports. We shall hold the company to these agreements. The variance is to this extent granted, the enforcement case concluded, and the stipulation accepted.

ORDER

1. General Iron Industries, Inc., and General Iron & Metal Co. (hereinafter "General Iron") shall take the steps outlined in its amended variance petition, and shall construct the control equipment therein described, so as to achieve compliance with the particulate emission limitations of the Rules and Regulations Governing the Control of Air Pollution, by no later than July 31, 1972.
2. General Iron shall within 35 days after receipt of this order post with the Agency a performance bond in the amount of \$150,000 to assure compliance with the terms and conditions of this order.
3. General Iron shall cease and desist from any burning or incineration of insulated cooper wire until completion of its compliance program as described in paragraph 1 of this order.
4. General Iron shall file with the Agency monthly progress reports, beginning April 10, 1972, with respect to its performance pursuant to said compliance program.
5. General Iron shall continue to pursue its application for an installation permit with the Agency and cooperate fully in effectuating any changes required by the Agency which do not totally change the general concept of said compliance program as set forth in General Iron's permit applications.
6. General Iron shall limit its rate of operations to the following rate until completion of the compliance program:

<u>Type of Material</u>	<u>Tons per Month</u>
Aluminum Alloy Scrap	200
Zinc Alloy Scrap	80
Lead Scrap	500
Copper Scrap	225

7. General Iron shall within 35 days after receipt of this order pay to the State of Illinois, in penalty, the sum of \$1500. Penalty payment by certified check or money order shall be made to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

8. General Iron is hereby granted a variance to operate in excess of the particulate emission limits of the Rules and Regulations Governing the Control of Air Pollution until July 31, 1972, on condition the other paragraphs of this order are complied with. Failure to adhere to this condition shall be grounds for termination of the variance.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 7<sup>th</sup> day of March, 1972 by a vote of 4-0.

Christan Moffett

