

ILLINOIS POLLUTION CONTROL BOARD
October 28, 1976

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 75-365
)
JAYAR-HOAG CHEMICAL COMPANY, INC.,)
)
 Respondent.)

Miss Dorothy J. Howell, Assistant Attorney General, Attorney
for Complainant
Mr. Clifford L. Weaver, Ross, Hardies, O'Keefe, Babcock and
Parsons, Attorney for Respondent

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

This matter comes before the Board on a Complaint filed by the People of the State of Illinois on September 11, 1975 charging the Jayar-Hoag Company with certain violations of the Board's Air Rules and of the Environmental Protection Act. An Amended Complaint was filed on September 23, 1975 and again on April 22, 1976. Four hearings were held in this matter with the first on January 19, 1976 and with the last on July 8, 1976, at which time a Stipulation and Proposal for Settlement was entered into the record.

Count I alleged that on June 24, 1975 Respondent caused or allowed the emission of certain contaminants into the environment and that the presence in the atmosphere of the contaminants was of sufficient quantity and of such characteristics and duration as to require the evacuation of a number of factories in the immediate area of the facility, thus unreasonably interfering with the enjoyment of life and property, and therefore causing air pollution as that term is defined in Section 3(b) of the Act, and in violation of Section 9(a) of the Act.

Count II alleged that since June 24, 1975 and continuing through the filing of the Complaint, Respondent has operated its facility in such a manner as to constitute a continuing threat of air pollution in violation of Section 9(a) of the Act.

Count III alleged that since January 1, 1973 and continuing through the filing of the Complaint, Respondent has operated a baghouse without first obtaining the necessary operating permit from the Illinois Environmental Protection Agency in violation of Rule 103(b)(2) of Chapter 2 of the Board's Air Rules and Section 9(b) of the Act.

Jayar-Hoag leases certain property at 8620 Ferris Avenue in the Village of Morton Grove and operates thereon a facility for the warehousing and contract blending, packaging and distribution of industrial chemicals. Included in Respondent's equipment are two ribbon blenders and one baghouse, all of which were installed in 1970 and an additional baghouse which was installed in 1975. Respondent has operated this equipment without the requisite operating permits, although Respondent submits that it was unaware of the permit requirement until so notified by Complainant in connection with an industrial accident on June 24, 1975 (Stip. p4, par. 3). The Respondent received permits for this equipment on January 1, 1976 (Stip. p4, par. 2).

The emission of contaminants on June 24, 1975 resulted from an error in the mixing sequence in the preparation of a detergent formula. As a result thereof, quantities of carbon dioxide, nitrogen, cyanogen, cyanogen chloride, hydrogen chloride, and chlorine were allegedly emitted into the atmosphere. The parties do not agree as to the quantities of these contaminants that were emitted as no actual sampling was performed. Although some people in the picnic area of a nearby forest preserve moved away from Respondent's facility at the direction of a police officer, neither party knows of any other persons affected by the evolving gas. Respondent further contends that persons in the area where warnings were given did not evacuate the area and did not suffer any ill effects (Stip. p9, par. 11). Fire Department personnel believe that the steady prevailing wind of June 24, 1975 served to mitigate the incident by directing the evolving gases in the direction in which there was the greatest distance between Respondent's facility and the nearest congregation of people (Stip. p9, par. 12).

The parties do not agree whether the emissions of June 24, 1975 constituted air pollution. Respondent submits that the incident was of insufficient duration and impact to constitute air pollution (Stip. p11, par. 15). Complainant submits that any emission of gases from industrial processes into the atmosphere represents a violation of the Act, and that the emissions and effect here were sufficient to constitute an interference with the enjoyment of life and property (Stip. p11, par. 16).

Because the pleadings do not conform to the proof, however, the Board will not render a decision on this issue. Complainant alleged that the emission of June 24, 1975 was of such a nature as to unreasonably interfere with the enjoyment of life and property by requiring the evacuation of a number of factories in

the area. Other than some people in a picnic area, the Stipulation specifically provides that neither Complainant nor Respondent knows of any person who was otherwise affected by the evolving gases (Stip. p9, par. 11). Because Complainant failed to prove the element of this violation relating to the unreasonable interference which the emissions allegedly caused, this Count will be dismissed.

The Settlement Stipulation provides that Respondent shall remit \$2,500.00 to the State of Illinois in the acknowledgment of the lack of the requisite operating permit. In consideration of the Settlement Stipulation and because Complainant is unaware of any violations of the Act or regulations presently existing at the facility, Complainant requests the Board to dismiss Count II without prejudice.

In consideration of the foregoing and the Stipulation in this matter, the Board finds that Respondent did operate its baghouse from January 1, 1973 until January 1, 1976 without the required operating permit in violation of Rule 103(b)(2) of the Board's Air Rules and in further violation of Section 9(b) of the Act. In consideration of the Settlement Stipulation and because Complainant is unaware that any violations presently exist at the facility, the Board will dismiss Count II without prejudice.

The Board finds the Settlement Stipulation adequate and will assess a penalty of \$2,500.00 for the violations found herein. Respondent will also be required to adhere to all other Settlement provisions.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondent, Jayar-Hoag, has violated Rule 103(b)(2) of the Board's Air Rules and Section 9(b) of the Act and shall pay a penalty of \$2,500.00 for these violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of the date of this Order to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

2. Respondent shall adhere to all provisions of the Settlement, said Settlement being included herewith by reference as if more fully set forth herein.

3. Counts I and II of the Complaint are hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of October, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board