

ILLINOIS POLLUTION CONTROL BOARD  
March 11, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 )  
 )  
 v. ) PCB 75-290  
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 )  
 SCOPE PRODUCTS, INC., DEXT )  
 COMPANY DIVISION, a California )  
 corporation, )  
 )  
 Respondent. )

MR. JAMES L. DOBROVOLNY, Assistant Attorney General, appeared on behalf of Complainant;  
MR. JOHN D. DONLEVY, appeared on behalf of Respondent.

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

This case comes before the Board on a Complaint filed by the Environmental Protection Agency (Agency) on July 25, 1975. The Complaint alleges that Respondent has violated Section 9(b) of the Environmental Protection Act (Act) and Rule 103(b)(2) of the Board's Air Pollution Control Regulations. A hearing was held on November 20, 1975 at which six stipulations of fact were entered into (R. 5), and 33 Exhibits were entered into evidence (R.8).

Respondent, Scope Products, Inc., Dext Company Division, owns and operates a facility, which processes surplus food materials into granule material which is used as an ingredient in animal feed. The facility consists in part of a rotary drier, a cyclone, and an aspirator and is located at 2300 West St. Paul Avenue, Chicago, Illinois. The aforementioned facility is a food and kindred products industry operation, and is capable of emitting certain solids, gases, odor, to the atmosphere. During its plant operations involving the specified equipment, from February 1, 1973 until the filing of the complaint on July 25, 1975, Dext Company had possessed no Environmental Protection Agency (Agency) permits. Stipulations 1-6. (R. 5, 6)

Respondent has admitted each and every fact necessary for this Board to find violations of the Act and Rule as alleged. However, Respondent raises a defense to such finding: an alleged immunity implied from a prior settlement. This defense was raised at page 2 of the transcript of the November 20, 1975 hearing, page 2 of Respondent's Brief, and page 3 of Respondent's Reply to the Agency's Brief (which did not discuss the issue).

The basis of the defense raised by Respondent rests in a prior enforcement action, PCB 73-326. The Board Order in that case, issued on May 9, 1974, accepted a settlement entered into by the Agency and Respondent. The Board there ordered Respondent, among other things, to obtain all necessary State permits for the operation of Respondent's plant (Exhibit 30, pp. 30-33).

However, Respondent claims that a letter from the Attorney General during the settlement negotiations (Exhibit 33, p. 2) states an understanding that the money penalty provided for in the settlement was to cover operating permit violations. The Respondent characterizes this as a "prosecutorial commitment", and cites a criminal case decided by the Supreme Court.

However, by no stretch of the imagination can Exhibit 33 be read as a commitment. The letter is an express rejection of Respondent's proposed settlement of October 26, 1973. The pertinent paragraph reads:

"The Agency also feels that a monetary penalty is appropriate in this matter for violation of Section 9(a) of the Act, as well as the failure of Dext to obtain permits for the operation of this facility".

This statement does not show any commitment as it is no more than correspondence submitted in the process of negotiating a settlement. The letter is not of sufficient weight to permit the Board to look beyond the four corners of the final settlement (Exhibit 30, pages 3-8).

Further, no violation of any permit requirements was either alleged in the Complaint in that case (Exhibit 30, pages 9-14) or admitted in the final settlement (Exhibit 30, pages 3-8). The absence of permits was not an issue in PCB 73-326 and was not included as an element of the settlement except to the extent that Respondent agreed to, and was ordered to, obtain "all necessary

State permits..." Therefore, a finding of violation and the imposition of a civil penalty for the period of February, 1973 to July 25, 1975 would not be contrary to the settlement adopted in PCB 73-326.

Respondent next alleges that the approved settlement of PCB 73-326 implied that Dext was to have a reasonable time within which to secure an operating permit. Rule 103(b)(2) required Respondent to obtain an operating permit by February 1, 1973. Thus, by the time of the issuance of the Order in PCB 73-326, Respondent had already had over 15 months to obtain the permits; which is not an unreasonable time. The permit violations were not an issue in PCB 73-326. The Board Order there requiring Respondent to obtain permits cannot be construed as an excusal of Respondent's past failure to obtain permits, or the granting of immunity for as long as it took to obtain the permits. Had the Board wished to grant any immunity from permit requirements it would have done so expressly by ordering the permits to be obtained by a date certain. No "grace" period can be implied from PCB 73-326. Even so, Respondent argues that an additional 14 months is not an unreasonable delay in obtaining a permit. Over 29 months elapsed between the time by which Respondent was required to obtain a permit and the date of the instant Complaint. Respondent sees nothing unreasonable about this.

Respondent further argues (Page 4 of Respondent's Brief) that its letter of March 17, 1975 (Exhibit 14) is a confirmation of a 30 day grace period granted by the Agency subsequent to Respondent's receipt of Official Legal Notice of the Agency's intent to prosecute Respondent (Exhibit 15). (R. 61) Respondent has failed to show that this alleged 30 day period was anything more than the Agency giving Respondent one last chance to submit the required information prior to referral of the matter to the Attorney General for action. In no way could this action be found to have been a grant of immunity for the alleged 30 day period.

Respondent states: "It is significant that the July 30 letter was mailed by Dext only five days after this cause was filed." Frankly, the Board fails to find any significance in this fact except in that it is a firm statement that Respondent had not complied with the Agency's requests for information prior to the filing of this Complaint.

Respondent also argues that 14 months after the Order in PCB 73-363 was not an unreasonable delay given the complex nature of the data requested. Several facts quickly dispose of that argument. Mr. Reardanz, the man who had complete charge of Respondent's facility (R. 10) has had no engineering training (R. 54). However, in spite of the technical nature of the forms (R. 55) and the fact that he found the forms confusing (R. 26, 28, 33, 40, 55), Mr. Reardanz was the only one authorized by Dext Company to work on the applications

(R. 33, 34, 49). Mr. Reardanz did not seek outside engineering help from a professional engineer (R. 55). As the Board finds that the cost of obtaining outside help qualified to do this work would not have been prohibitive, the delay simply becomes unreasonable. Even if Mr. Reardanz did make an honest effort to comply, it is clear that Respondent Dext Company did not provide him with the resources necessary to get the job done. The Board finds that the reasons for delay given by Mr. Reardanz are simply not persuasive when weighed against the unreasonable amount of time involved.

Thus, while the degree of actual environmental damage is small, it must be remembered that the permit program is the core of the environmental program. As such, any permit violation poses a significant interference with the protection of the general welfare of the people of Illinois. Respondent has no exceptional social and economic value and is not unsuitable to the area in which it is located. However, the Board finds that the ease by which Respondent could have, with an earnest effort, obtained and submitted the required information makes the violation and extraordinary delay unreasonable.

A substantial penalty is appropriate here to protect the integrity of the permit program. It will show both this Respondent and other potential violators that the permit requirement is to be taken seriously. In this case, 14 months of the 29 month-long period of violation passed subsequent to PCB 73-326 in which the Board ordered Respondent to obtain the permits. The information necessary to complete the permit application was not submitted until after the filing of this Complaint. Even though there is evidence that the permit has now been granted this was in no way caused by any diligent effort on Respondent's part. The Board will therefore direct Respondent to pay a penalty of \$1,500.00.

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

#### ORDER

1. Respondent, Scope Products, Inc. Dext Company Division, is hereby found to have violated Section 9(b) of the Environmental Protection Act and Rule 103(b)(2) of the Board's Air Pollution Control Regulations.

2. Respondent, Scope Products, Inc., Dext Company Division, shall pay, for the above violations the sum of \$1,500.00 to the State of Illinois. Payment shall be made by certified check or money order within 35 days of the date of this Order to:

State of Illinois  
Fiscal Services Division  
Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

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 11<sup>th</sup> day of March, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board