ILLINOIS POLLUTION CONTROL BOARD
February 3 , 1977

PEOPLE OF THE STATE OF ILLINOIS and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainants,	)	
v.	)	PCB 75-189
PROCESSING AND BOOKS, INC., an Illinois Corporation, and NATIONAL MELLODY FARM FRESH EGGS COMPANY, an Illinois Corporation,	)	
Respondents.	)	

Mr. James Dobrovolny, Assistant Attorney General, appeared on behalf of Complainants.
Mr. Lewis Clarke and Mr. Clayton P. Voegtle appeared on behalf of Respondents.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

The original complaint in this matter was filed on May 2, 1975 with the Clerk of the Pollution Control Board (Board) by the People of the State of Illinois (People), represented by the Attorney General, William J. Scott. An amended complaint was filed on August 20, 1975 by the People and the Environmental Protection Agency (Agency). This amended complaint alleges that Respondent, National Mellody Farm Fresh Egg Company, owns and Respondent, Processing and Books, Inc., operates a facility for the production of eggs, including but not limited to two incinerators and sixteen chicken houses, each of which contains approximately 21,000 chickens, which is located on the east side of Butterfield Road, near the Village of Mundelein, County of Lake, State of Illinois; that beginning on March 1, 1973 and continuing everyday of operation through the date of filing Respondent has operated its incinerators without having first obtained operating permits from the Agency in violation of Rule 103(b)(2) of the Chapter 2: Air Pollution Regulations (Chapter 2); and that each of the chicken houses located at

Respondents' egg producing operation causes the concentration of large quantities of organic material which is emitted through numerous exhaust fans, thereby constituting existing emission sources as defined by Rule 101 of Chapter 2 and in violation of Rule 103(b)(2) of Chapter 2.

A hearing was held in this matter on October 19, 1976 in Waukegan, Illinois. At the hearing the parties introduced a stipulation of fact with which all parties agreed. This stipulation outlines the procedural aspects of the case. This proceeding was stayed on June 18, 1975 by the Appellate Court Second District, pending the final disposition of PCB 72-148, a case involving the same parties and the same facility. The Illinois Supreme Court vacated the Order of the Appellate Court on June 27, 1975. Rehearing was denied.

On July 15, 1976 Complainants filed a Request for Admissions of Fact pursuant to Procedural Rule 314. Respondents filed a Response to Request for Admission of Fact on August 31, 1976. Complainants point out in their brief that this is not a timely filing and under Procedural Rule 314 would generally be deemed as admitted. However, Respondents point out that Complainants did not object to the filing of the late response until after the hearing. More than seven weeks went by from the filing of the Response to the hearing date. The Board agrees with Respondent in this matter. Although the filing was late sufficient time was available for Complainants to prepare their case. It would also be unfair to go through the hearing process with Respondents not having sufficient notice that the facts had been deemed admitted against Processing and Books, Inc. The Board must also rule on three offers of proof made by the Attorney General in this case (R. 12-19, 39-41, 43, 44). The Board will allow this testimony to remain a part of the record; it is necessary to the development of Complainants' case as set forth in the amended complaint.

The parties have also stipulated to the facts of this case. Ownership and the location of the facility are as set out in the complaint. The chicken houses have been in operation since at least April 13, 1972. Each of the chicken houses is approximately 360 by 40 feet in size and house approximately 21,000 chickens. Cages in the chicken houses are used to house the chickens, eight to a cage, elevated three feet from the floor. Under each row of cages in the chicken houses is a manure trough built into the concrete floor. Underneath the center of each

of the chicken houses is a large manure holding pit. The holding pit underneath the center of each chicken house is forty-five feet long, fifteen feet wide and ranges in depth from nine feet at the shallow end to twelve feet at the deep end. Chicken manure drops through the bottom of the aforesaid cages into the manure trough. The manure is mechanically scraped by a chain scraper into the manure troughs starting at each end of each manure trough and scraping through the manure trough towards the center of the building where it drops through an opening approximately twelve inches across the manure troughs into the holding pits underneath the center of the building. This process occurs twice a day.

The manure collects in the holding pits until the pits are emptied, the frequency of which varies, but would generally be between ten days and three weeks. The manure when pumped out of the holding pits is pumped into a mobile tank and towed by a tractor which transports it to the point of disposition for the manure to be emptied from the tank. The frequency of the pumping operation varies with the operation of the farm, weather and other factors.

It is stipulated that to ventilate the chicken houses fans have been installed, thirty in some houses, fifteen in others. The difference in fans is one of size. The total capacity for each chicken house is approximately the same. The fans are activated by thermostatic controls which are governed by the temperature inside the chicken houses. The thermostatic controls determine the number of fans operating at any one time as well as the frequency of operation.

The stipulation states that until the manure is agitated or disturbed there is little or no odor. During pumping covers are placed on the openings in the manure troughs; the openings otherwise remain uncovered.

It is stipulated that from May 1, 1973 until the filing of the amended complaint Respondent has operated these chicken houses without operating permits from the Agency.

Respondent also employs two incinerators, as stipulated, to dispose of approximately 100 chickens which die daily in the normal course of operation. These chickens are placed in one of the incinerators which are made by Shenandoah Manufacturing Company. The incinerators are fitted with after burners that are intended to eliminate emissions of extra odors, gases and particulates.

The agreement states that during July 1973, Leonard McGee, Respondent's attorney, called the Agency requesting permit application forms for the incinerators. During July 1973, Mr. McGee spoke with an Agency employee, Mr. Stella, who indicated in that conversation that Shenandoah Incinerators had not, as yet, been approved and that only one application had been received. Mr. Stella also indicated that if the Agency needed more technical information, then the Agency would deal directly with the manufacturer. Thereafter the proper forms were received by Respondent on July 25, 1973. Respondents prepared the permit application forms for the construction of new incinerators which the farm intended to purchase as replacement for the existing incinerators, which had no permits. The Agency received the application on October 11, 1973.

Shenandoah Manufacturing notified Respondents that they did not believe a permit could be issued for the existing incinerators, but that permits could be obtained for the new incinerators for which Respondents were applying for construction permits. The farm cannot operate without the daily use of the incinerators. Therefore, the farm constructed the new incinerators and disposed of the old incinerators.

The stipulation states that on November 27, 1973, the Agency wrote directly to Shenandoah requesting further information for the incinerators on Respondents' property and stating if the information was not supplied within thirty days the application would be denied. Respondents also received a copy of that letter. Shenandoah wrote the Agency on December 12, 1973 requesting identification of the model number of the incinerator in question. The Agency responded by calling Shenandoah on December 21, 1973 and Shenandoah said they would try to submit the data by December 26, 1973. On December 27, 1973 Respondents wrote the Agency requesting an extension of time for finishing the additional information. The Agency received this letter on January 2, 1974 but did not respond. On January 3, 1974 the Agency wrote Respondents notifying them that the permit application was denied. Mr. McGee again phoned the Agency and was informed that if the manufacturer were to submit further test data, the Agency could reconsider the application without the necessity of a new filing. Shenandoah indicated new test results would be sent to the Agency. The Agency received a copy of this letter.

After the filing of the initial complaint herein, Shenandoah informed Respondents that the incinerators would not meet the Agency's requirements. Shenandoah did have other models that would meet these requirements. Respondents applied for

construction permits for new incinerators which they intended to purchase which the Agency approved March 10, 1976. New incinerators were constructed and an operating permit applied for from the Agency. An operating permit was approved for the new incinerators on May 12, 1976. Both parties agreed that from April 1, 1973 to the filing of the amended complaint Respondents had allowed operation of the incinerators without operating permits from the Agency.

The People and the Agency assert that Respondents' chicken houses, as an entire unit, are emission sources for organic substances. Complainants base their case on the fact that there is an odor around the chicken houses--an indicia of emissions (R. 18, 19). An environmental protection engineer from the Agency stated that manure was clearly organic material (R. 41). The Board finds that Complainants have failed to show any substantive evidence that the chicken houses emit organic material. Rule 201 of Chapter 2 defines organic material as:

> Any chemical compound of carbon including diluents and thinners which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents, but excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbonic acid, metallic carbide, metallic carbonates, and ammonium carbonate.

Complainants have made no laboratory analysis of the chicken manure (R. 49). There has been no showing of the quantity or type of emission. It has not been shown that chicken manure is a compound of carbon or that it has been used as a dissolver, or a viscosity reducer or a cleaning agent.

In the Board's adopting opinion concerning organic material emission standards, R71-23, 4 PCB 298, 336, 337 (1972) the Board stated:

> Rule 205: Organic Material Emission Standards serves both to achieve and maintain compliance with the federal air quality standard for photochemical oxidants (0.08 ppm for one hour not more than once per year, 36 Fed. Reg. 22385, Nov. 25, 1971) and to prevent local nuisances.
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> . . . .
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> Not all the provisions of Rule 205, however, are limited to reactive materials, since

> photochemical smog is not the only adverse result of organic emissions. Rules 205(a), (b), (c), and (d), for example, apply to all volatile organic materials in light of testimony about such installations as oil refineries. These provisions are designed to require the use of equipment that is already in use at numerous facilities even if there is no substantial risk of Los Angeles smog. In addition, if local odor nuisances exist, 205(b) and (c) call for control of all organic materials.

The major purpose of these regulations is for control of photochemical oxidants. In addition odor causing organic emissions were included if a local odor nuisance exists, in this case no such facts were presented to the Board.

Complainants have not alleged that the fans themselves are an emission source. Complainants have stated that is not their contention (R. 27, Brief 2). The Board notes that the fans are covered by the exemption provided by Rule 103(i)(2) of Chapter 2.

> Exemptions. No permit is required for the following classes of emissions:
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> (2) air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

The Board finds there is insufficient evidence to show that the odor of chicken manure is an indicia or is itself an organic material as regulated by the Chapter 2 Regulations. The allegation of violation of Rule 103(b)(2) of Chapter 2 in relation to the chicken houses is dismissed.

The parties involved have stipulated to the fact that Respondents did not have the necessary permits for the operation of the two incinerators (Stip. 12). The Board finds that Respondents' incinerators do need permits under the Regulations and Respondents are in violation of Rule 103(b)(2) of Chapter 2 for their failure to have the necessary permits. Prior to determining what penalty if any is necessary the Board must consider the factors of Section 33(c) of the Act. Those factors were not specifically addressed by

Respondent whose burden it is to produce such information, Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E. 2d. 865 (1976). The Board will consider what information it does have. First the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people must be considered. No actual damage was shown at the hearing concerning Respondents' failure to obtain the proper permits; however, there is potential for damage or interference with the health and welfare of the general public. An improperly run incinerator used for chickens could cause odors, attract vectors or spread disease. The Agency's permit system is there to provide expertise and prevent such unfortunate occurrences. Although there were some communication problems between Respondent, the Agency, and the manufacturer, a three year delay in obtaining a permit is inexcusable.

The nature of Respondent's facility would generally allow it a positive social and economic value. The farm is twelve hundred acres, a thousand of which are used to raise corn (R. 75, 76). At the time of the hearing Respondents had 300 to 400 head of hogs which were being fattened for market (R. 76). They also have hackney show horses, the chicken operation, and turkeys for a few months each year (R. 76). Obviously the end products of these operations are a social and economic necessity. The value is diminished if in the growth process the environmental degradation is a detriment to the community.

There are no facts presented in this case concerning the suitability of the location of the facility. On this basis the Board must assume the location is not an issue. Clearly it is technically and economically practicable for Respondents to obtain permits for their incinerators as they have already done so. The Board does note that had Respondents taken greater care and made inquiries to the manufacturer and the Agency when they purchased incinerators in 1973 that the purchase of new incinerators in 1976 may not have been necessary.

The Board finds that although Respondents are now in compliance that they have been dilatory and careless in coming into compliance. In mitigation the Board finds that in this case Respondents acted in good faith purchasing incinerators from their previous supplier. At the time of the purchase the Board's Air Pollution Rules had been recently put into effect, April 14, 1972; thus, some confusion would be expected. Respondents should not be penalized because

neither the Agency nor the manufacturer had sufficient data to allow the required permits. However, the failure to actively follow the progress of their permit application resulting in an unreasonable delay mandates a penalty to aid in enforcement. A penalty of $500 will be assessed.

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

ORDER

It is the order of the Pollution Control Board that:

1. The allegation of violation of Rule 103(b)(2) of the Chapter 2: Air Pollution Regulations in relation to the chicken houses of the Respondents, Processing and Books, Inc. and National Mellody Farm Fresh Eggs Company, is dismissed.

2. Respondents are found to be in violation of Rule 103(b)(2) of Chapter 2 as it applies to their incinerators.

3. Respondents shall pay a penalty of $500 within 35 days of this order. Payment shall be by certified check or money order payable to:

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

Mr. James Young concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3RD day of February, 1977 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board