ILLINOIS POLLUTION CONTROL BOARD
February 15, 1979

ENVIRONMENTAL PROTECTION AGENCY, Complainant, v. FOX VALLFY GREASE COMPANY, INC., Respondent.	)	PCB 76-56 PCB 76-220 CONSOLIDATED
ENVIRONMENTAL PROTECTION AGENCY, Complainant, v. ANTOINETTE ANDERSON, d/b/a FOX VALLEY GREASE SERVICE, Respondent.	)	

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

These cases concern the operation of a rendering plant near Huntley, Illinois. A Consolidated Amended Complaint alleges operation of a wastewater treatment works without a permit, violation of the standard conditions of a permit to operate an air pollution source, and the emission of excessive odors. Hearings were held at the McHenry County Courthouse on May 2, May 9, June 3, June 13, June 15, June 17, July 1, September 26, October 17, October 24, and November 14, 1977; and on April 20, April 21, May 1, May 11, and May 12, 1978.

Count I attributes the unpermitted operation of the wastewater treatment plant to Respondent Antoinette Anderson (Mrs. Anderson) from January 1, 1973 until April 1, 1974. Counts II-V allege a continuation of this practice as well as other violations by Respondent Fox Valley Grease Company, Inc. (Fox Valley) from April 1, 1974 until January 31, 1977, the date the Consolidated Amended Complaint was filed.

The threshold issue in these cases is whether the named Respondents are responsible for the alleged violations. The rendering business was moved to its present site near Huntley in late 1970 and early 1971 (R. 45). The business had been owned by Mrs. Anderson's late husband. When it was moved, the decedent's estate had not been distributed (R. 4748). Mrs. Anderson stated that the business, the buildings and the land were left to her (R. 48). Her son, Michael Hopkins, said that the business was left to his brother, Mrs. Anderson, and him (R. 411). The business was not incorporated into its present structure until April 1, 1974 (Ex. 14, 15, par. 1). During the intervening period between her husband's death in 1970 and incoporation in 1974, Mrs. Anderson kept the books of the business and ran it along with her two sons (R. 48, 412). From this evidence it can be concluded that during the period contemplated by Count I of the Consolidated Amended Complaint, Mrs. Anderson was at least one of the people responsible for the operation of the rendering facility near Huntley. The admission of both Respondents shows that during the period contemplated under Counts II-V, the responsible entity was Fox Valley Grease Company, Inc.

Ever since 1971 the wastewater from the rendering plant has been discharged through a series of grease traps, to a ditch, and then to a lagoon located on the site (R. 391, 691). This wastewater comes from process discharges and floor washing (R. 393). Ultimate disposal of the wastewater comes from evaporation or percolation with no direct discharge to any stream or sewer (R. 692). Rule 104 of Chapter 3: Water Pollution of the Board's Rules and Regulations defines "treatment works" as "those constructions or devices ... used for collecting ... or disposing of wastewaters..." This lagoon clearly lies within the scope of this definition. Former Rule 903(a) of Chapter 3 (effective until October 11, 1974) and the present Rule 953(a) both provide that "No person shall cause or allow the use or operation of any treatment works ... after December 31, 1972 without an operating permit issued by the Agency..." Since the Agency showed that neither Respondent ever had a permit to operate a wastewater treatment works (R. 1226, 1325), violations of former Rule 903(a) and present Rule 953(a) have been established.

In Count IV the Agency alleges that Fox Valley violated standard condition #2 in an operating permit dated September 17, 1975 (Ex. 48). Since this permit expired on September 2, 1977 and the standard condition cited in the complaint pertains only to grounds for revocation, this count must be dismissed as moot.

Count V alleges that Respondent Fox Valley violated Section 9(a) of the Act from March 17, 1975 until the date of the Consolidated Amended Complaint (January 31, 1977) by causing air pollution from the emission of odors. The Board has held that a person can be found to have caused air pollution from odors if the following test is satisfied:

1) Was there in fact an odor?
2) Was the odor caused by Respondent?
3) Did the odor result in interference with the lives, environment, enjoyment of property, etc. of the citizens affected?
4) Was such interference unreasonable, such unreasonableness being measured, in part, by the criteria in Section 33(c) of the Act?
(See People v. North Shore Sanitary District and City of Highland Park v. North Shore Sanitary District, PCB 74-223 and 74-229 consolidated, 19 PCB 192, November 6, 1975.)

1) There was a considerable amount of testimony to the effect that there was an intermittent offensive odor in the vicinity of the Fox Valley plant (R. 146,196,234,299,327,631,898). All of this testimony came from firsthand observations.

2) The source of the odors was determined in a number of ways. One witness indicated that it smelled like the odor created when her mother used to fry hog intestines to make soap (R. 146). Another witness recognized the smell as being similar to "frying down the meat", a practice that was common before refrigeration (R. 899). One woman recognized the odor as the same smell as the one she detected from the Fox Valley Grease Blending Company in South Elgin, which was the predecessor to the subject rendering facility (R. 197). Another witness said she first noticed the same smell when a prior grease rendering plant was located on the site of the present Fox Valley site. Since the emissions from Fox Valley come from a process of heating and dewatering grease, fat, and bones, the similarity between that smell and the one described by these witnesses is clear.

Some witnesses identified the source of the odors by indicating the relative locations of their homes and Fox Valley on Exhibit 6. The presence of odors was correlated with the days that the wind blew from the direction of Fox Valley (R. 158,203,232,300,343,329, 900). One Agency employee traced the odor as he drove south from Huntley. As he approached Fox Valley he noticed the odor got progressively worse (R. 631). Another Agency employee identified offensive rendering odors downwind from the plant (R. 1115).

Other potential odor sources in the vicinity were ruled out as either different or from the wrong direction (R. 152,154,205,223, 257,265,304,314,332,341,906).

3) The most common interference with enjoyment of property cited by witnesses was the fact that they were forced to go indoors. This resulted in the cancellation of outdoor activities (R. 239,258) such as picnics (R. 302) or eating outside (R. 331) or working with horses (R. 315) or tending a garden (R. 155). One witness had to go inside and turn on the air conditioning (R. 901). Two witnesses had to rewash bedding which had been out to dry (R. 209,907). A couple testified that both of them had been awakened on some summer nights and that they had to get up to close the windows (R. 239, 313). On cross examination all these witnesses admitted that the smell had never actually made them sick (R. 165,208,324, 347,918).

4) These interferences were bad enough to cause some of the residents to complain to Fox Valley (R. 210,213,235, 312,337,349) and others to local authorites (R. 155,908). All of the Agency's citizen witness stated that the odor had been noticeable on many occasions over the past few years. The odor was described as "bad" (R. 196), "sickening" (R. 208), "pungent" (R. 299), and "sickening stench" (R. 327). One witness said that the odor aggravated her asthma and caused her to use an atomizer (R. 154).

Respondents produced six witnesses to show that the odors were not objectionable (R. 13381377). Their testimony was properly excluded by the Hearing Officer because the Agency was given no warning that these witnesses would be called.

The social and economic value of the Fox Valley plant is not well established in the record. The plant recycles grease from restaurants within a 100 mile radius and employs 12 truck drivers as well as 14 operators at the plant (R. 498,450,1387). The value this plant has is reduced by the odors which interfere with the nearby residents' enjoyment of their property.

The area around the affected homes was described as usually very quiet (R. 146), very nice (R. 898) and "good country air" (R. 327). Most of the surroundings are farm land with some industries (Ex. 6, R. 49-51,147,332). The residents are accustomed to farm smells (R. 163,205,216,266,323,346,918) and don't mind them. One witness said that a similar smell emanated from a prior rendering plant located on the same site (R. 904). Another witness said he knew Fox Valley was there when he bought his house, but he did not know it smelled bad (R. 238). Two witnesses identified the smell from Fox Valley as a common one many years ago when there was no refrigeration (R. 899) and people made their own soap.

There are a number of odor sources at the Fox Valley plant. The largest contributor is the cooking process with emissions occurring during loading (R. 1122,1551) and operation. Odors were also observed from the expeller (R. 1127,1534), the perk pans (R.1122,1534) raw material storage (R. 1119,1534), the wastewater lagoon (R. 965, 986, 1532), the hammer mill, and the blow tank (R. 1127).

A witness for Respondents stated that current technology for control of cooker emissions consists of a condenser followed by incineration of noncondensible gases (R. 1534). Both sides agree that all odor sources inside the plant could be controlled by venting to a scrubber and maintaining a negative indoor pressure (R. 1150,1535). This second alternative would control odors from all high intensity sources and would probably eliminate complaints (R. 1142-1151,1557). Although the wastewater lagoon is an odor source, it is probably not the cause of complaints (R. 1555).

Installation of a scrubber/negative pressure system would cost over $120,000 (R. 1537) and would take at least eleven months (R. 1558). This system is presumed to be economically reasonable because Respondents have not presented any evidence of financial condition to rebut this conclusion. In a case involving odors, the Illinois Supreme Court stated that the complainant does not have the burden to prove all of the factors in §33(c) of the Act (which includes economic reasonableness) [Processing and Books, Inc. et al v. PCB, et al., 64 Ill. 2d 68, 351 N.E. 2d 865,869 (1976).] Section 31(c) of the Act places the burden on Respondents to show that compliance would impose an arbitrary or unreasonable hardship. In another recent case involving odors, the Illinois Supreme Court held that when economic feasibility is not an issue, the complainant has the burden to show technological practicality of compliance (which the Agency has done here) [Wells Manufacturing Company v. PCB et al, _____Ill. 2d____, 383 NE2d 148 (1978)].

Consequently the Board finds that Respondent has emitted odors beyond the boundaries of its property from March 17, 1975 until January 31, 1977 which have unreasonably interfered with the enjoyment of life or property.

In order to rectify the violations alleged and proven in Counts I-III, Respondents must either obtain a permit to operate their wastewater lagoon or discontinue its use. Before the Board can decide whether Respondents must cease and desist from these violations, it must consider the factors in §33(c) of the Act.

Respondents have attempted to obtain operating permits which would allow them to continue to use the lagoon. Their most recent attempt, which was denied by the Agency, is chronicled in Fox Valley Grease Company v. EPA, PCB 77-179, 30 PCB 87, April 27, 1978. In that case the Board affirmed the Agency's denial. The Board held that the Agency's suspicions that seepage from the lagoon might be causing pollution of ground water were well founded. The record in this case provides additional expert testimony which essentially expands on the same evidence in that case.

The Agency contends that the soil in the vicinity of the plant site is too permeable for this sort of percolation system (R. 1272) and that the shallow groundwater could become polluted (R. 1283,1287). The soil is alleged to be too coarse to filter chlorides, sulphates, and ammonia (R. 1291,1293). In the alternative, if the soil were impermeable, pollutants would migrate laterally through the soil to nearby surface waters (R. 1289).

Respondents countered with testimony to show that the soil underlaying the lagoon was sufficiently impermeable to prevent downward migration to the deeper aquifers (R. 1662,1664,1673, 1718,1739). Although some of the water would reach shallow groundwater, Respondents contend it would take at least 3500 years to reach the Kishwaukee River (R. 1652).

On rebuttal the Agency contended that the layers of soil in the area were not continuous (R. 1784) and that the soil borings in the record did not controvert this conclusion (R. 1788,1946,1952). Even though impermeable clay layers exist, they may contain vertical cracks which would allow pollutants to migrate down to the groundwater (R. 1791,1809). The Agency calculated that water from the pond migrates to a well on the Fox Valley site in 40 days (R. 1974). If this well were to stop pumping, the lagoon water would reach a nearby drainage ditch in 345 days (R. 1977).

Respondents attempted to introduce additional evidence challenging the Agency's rebuttal. The Hearing Officer properly refused this testimony because Procedural Rule 318 does not provide for a Respondent's rebuttal without a showing of good cause. The Board agrees that no good cause was shown.

Based on the above evidence the Board concludes that a potential for groundwater pollution exists. The conclusions drawn by both sides' witnesses are based on data which they either did not personally collect or which is not local to the Fox Valley site. With more information either side may have established its position more clearly. At present the Board can only conclude that the lagoon may be draining to the groundwater. By its nature, this drainage would cause water pollution (R. 1240,1259,1855).

As noted previously the social and economic value of the Fox Valley plant is not well developed. The value the plant has is greatly diminished by unpermitted subsurface wastewater disposal which may be causing groundwater pollution.

The suitability of the location of the wastewater lagoon has already been discussed. Even though it has been there for over 8 years, it may be polluting groundwater which is being used for home drinking water (R. 1283).

The Agency contends that the best method for compliance would be pretreatment of wastewater at the plant followed by a discharge to the Village of Huntley sewer system and sewage treatment plant (R. 1247). Exhibits 102(c) and 102(e) describe the systems which the Agency feels would be acceptable. In Exhibits 102(a),(d) and (f), the Agency has outlined some acceptable treatment schemes which would result in a surface discharge. The Agency has concluded that Respondents could receive permits to dispose of their wastewater under either mode (R. 1251,1856). Another system employing spray irrigation was also identified [Ex. 102(b)].

The costs for these systems are somewhat speculative. The Agency's cited costs do not include operation and maintenance or the additional expense which might accompany the training and/or compensation of a certified operator.

The technical practicability of a surface discharge is not questioned. Whether or not this alternative is economically reasonable is up to the Respondents to show. Without any evidence of Respondents' financial condition the Board must assume that these costs could be undertaken.

Respondents have been pursuing the idea of connecting to the Huntley sewer system (R. 1450). Respondents are faced with three problems (R. 1458): 1) Pretreatment. The Agency has shown that pretreatment can be accomplished. Respondents have not shown that pretreatment would be too expensive. 2) Obtaining easements across intervening parcels of land. Although Respondents are confident that a connection will be made (R. 1512), there is no way of assuring if or when the easements will be obtained (R. 1506). 3) Finding a point of entry into the Huntley sewer system. Presumably this problem will not be solved until easements have been acquired.

Even though it is apparent that Respondents will probably eventually tie in to the Huntley system, the Board cannot conclude that this alternative to the present wastewater lagoon is technically practicable. However, the record does support the conclusion that a surface discharge system could be installed. The alternative of spray irrigation appears to be available although there could be problems with land acquisition, project operation, and surrounding geology (R. 1902).

Based on this analysis a cease and desist order is justified. Without more information on the underlying geology the wastewater lagoon must be viewed as a potential source of ground water pollution. This potential detracts from the suitability of its location and the value of the Respondents' operation in general. Even though an immediate solution may not be at hand, the lagoon can be eliminated.

Since the Board has already reviewed the factors in §33(c) of the Act to determine that Respondents have emitted odors which have unreasonably interfered with the enjoyment of life or property, another review will not be necessary. Respondents must cease and desist from these violations as well.

The issue now is how much time will be needed to abate these violations.

Respondents have indicated that even though they don't think it is necessary, all noncondensible gases are presently being vented to the boiler for incineration while the cookers are operating (R. 403,407,488,490). After an internal system for handling citizens' complaints has been instituted and no complaints come in while good housekeeping is employed and the present system is operating, no further control will be needed. If after six months from the date of the Boards' Final Order in this case, the present system is still inadequate, Respondents will have one year to apply for the necessary permits and install additional controls (R. 1558). The Board is aware of the fact that elimination of the lagoon may help to reduce citizens' odor complaints (R. 1539).

The wastewater lagoon will probably be eliminated by installation of a pretreatment system and connection to the Huntley sewer system. Since the Board has concluded that this alternative has not been established as technically practicable, no order can be fashioned around it. Based on its own experience in the installation of wastewater treatment systems, the Board concludes that one year should give Respondents adequate time to apply for the necessary permits and install a surface water discharge system to replace the existing lagoon. It is still conceivable that Respondents could obtain a permit for the existing lagoon. In light of the evidence in this record, this alternative does not appear likely.

The Board may assess penalties for violations of the Act or the Rules whenever it is necessary to aid in the enforcement of the Act. By their own admission, Respondents have on occasion cut off the incineration which was part of the odor control system (R. 1603). On some occasions Agency employees observed that the condenser and/or the incineration system was not operating and that odors were being released

(R. 632) or they were told by Respondents' employees that the system was not always operating (R. 969,992,998,1118). Even though some of these cutoffs were caused by malfunctions, Respondents must accept responsibility for these emissions. Coupling this responsibility with the extensive discomfort caused by these odors, the Board finds that a penalty of $2,000 for this unreasonable interference is appropriate.

The Board cannot overlook the fact that Respondents have continued to operate their wastewater treatment system without a permit for over seven years. Respondents' claim that they thought no permit was needed cannot be honored. Fox Valley's predecessor, which was operated by Mrs. Anderson's deceased husband and then Mrs. Anderson, was penalized $1,000 by the Board on October 14, 1971 (Ex. 1) for failing to obtain a permit for this same lagoon. An Agency employee testified that he advised one of Respondents' employees on February 19, 1971 that a permit was necessary. Even though Respondents attempted to obtain a permit in August, 1971 (R. 679), November, 1971 (Ex. 32) and May, 1972 (Ex. 35) and all these were denied, no permit appeal was filed. No new permit application was filed until February, 1977 (Ex. 37). During this hiatus Respondents were notified that they were in violation (Ex. 26,27) and the Agency unsuccessfully attempted to negotiate a settlement (R. 842844,849). Although the Board is aware of the difficulties Respondents have had, a penalty of $2,000 will be assessed because of the length of time this violation has been allowed to continue.

On November 1, 1978 Respondents moved the Board to dismiss the Consolidated Amended Complaint in this case based on Hearing Officer errors or in the alternative for additional hearings or to correct the record. First, the motion is inappropriate since cases are not dimissed because of actions by one of the Board's Hearing Officers. Second the Hearing Officer should instead be commended for his ability to handle such a lengthy and trying proceeding. Third, the Board has already remanded this case for further hearings and provided Respondents with adequate opportunity to present their case. Fourth, the motion fails to substantiate any of Repondents' claims with anything more than merely conclusory remarks. Consequently the motion shall be denied in all respects.

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

ORDER

It is the Order of the Pollution Control Board that

1) Respondent Antoinette Anderson violated Rule 903(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations and Sections 12(a) and 12(b) of the Act from

January 1, 1973 until April 1, 1974;

2) Respondent Fox Valley Grease Company, Inc. violated Rule 903(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations and Sections 12(a) and 12(b) of the Act from April 1, 1974 until October 11, 1974;

3) Respondent Fox Valley Grease Company, Inc. violated Rule 953(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations and Sections 12(a) and 12(b) of the Act from October 11, 1974 until January 31, 1977;

4) Count IV of the Consolidated Amended Complaint is hereby dismissed;

5) Respondent Fox Valley Grease Company, Inc. violated Section 9(a) of the Act from on or about March 17, 1975 until January 31, 1977;

6) Respondent Fox Valley Grease Company, Inc. shall immediately institute a program of good housekeeping and an internal system for responding to citizens' odor complaints, and shall submit the program and system to the Agency for approval;

7) Respondent Fox Valley Grease Company, Inc. shall apply for and obtain any necessary Agency construction and operating permits and cease and desist all violations of Section 9(a) of the Act within 18 months of the date of this Order;

8) Respondent shall apply for and obtain the necessary construction and operating permits and shall cease and desist from further violations of Rule 953(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations and Sections 12(a) and 12(b) of the Act within one year of the date of this Order;

9) Within 45 days of the date of this Order Respondents Antoinette Anderson and Fox Valley Grease Company shall forward the sum of $2,000, payable by certified check or money order, as a penalty for the violations cited in paragraph 1-3 of this Order, subject to joint and several liability, to:

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

10) Within 45 days of the date of this Order Respondent Fox Valley Grease Company, Inc. shall forward the additional sum of $2,000, payable by certified check or money order, as a penalty for the violation cited in paragraph 5 of this Order, to:

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

11) Respondents' motion to dismiss amended consolidated complaint based on Hearing Officer errors, or in the alternative for additional hearings conducted by a different Hearing Officer to afford Respondents a full and fair hearing (which was denied Respondents by the Hearing Officer), or in the alternative, to correct the record dated November 1, 1978 is hereby denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of February, 1979 by a vote of 3-0.

Christan L. Moffett/ss
Christan L. Moffett, Clerk
Illinois Pollution Control Board