

ILLINOIS POLLUTION CONTROL BOARD
March 3, 1977

PEOPLE OF THE STATE OF ILLINOIS)	
and the ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Complainants,)	
)	
v.)	PCB 74-452
)	
GARVEY GRAIN, INC.,)	
a Kansas Corporation,)	
)	
Respondent.)	

Mr. James K. Jenks, Jr. and Mr. Jeffrey S. Herden, Assistant Attorneys General, appeared on behalf of the Complainants. Mr. Victor F. Ciardelli appeared on behalf of the Respondent.

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

This matter comes before the Board upon a complaint filed December 3, 1974 by the People of Illinois, ex rel William J. Scott, Attorney General of the State of Illinois. An amended complaint was filed January 9, 1975 adding as additional complainants the Environmental Protection Agency (Agency). This amended complaint alleges that Respondent at all times pertinent to this complaint has operated a grain storage facility known as the Rock Island Elevator, located at 93rd and Harbour Streets in Chicago, Cook County, Illinois; that this facility consists of three annexes which are used for storage, receiving, shipping and handling of grain and the manufacture of feed pellets; that the processing and handling of the above materials result in the release of particulate emissions at various points during the production processes; that the above indicated emissions constitute contaminants and have such characteristics and are of such duration that they constitute air pollution as defined by Section 3(b) of the Environmental Protection Act (Act) in that they cause injury to the health of persons living and working in the vicinity of the contaminants or unreasonably interfere with the enjoyment of life or property of such persons by causing particulate accumulations upon and within their automobiles and upon nearby realty, as well as by interfering with

their respiration and vision; that on or about July 1, 1970 and continuing everyday of operation of its facility to the filing of this complaint, Respondent violated Section 9(a) of the Act by causing or allowing the aforesaid air pollution; and that the emissions and violations alleged will continue on each day of operation hereafter unless abated.

The first hearing in this matter was held October 3, 1975. Due to a cross-up in communications Respondents did not appear at the first hearing and there was no cross-examination of witnesses or response made by Respondents. This was corrected in additional hearings held October 25, 26 and 27 of 1976.

At the first hearing two employees of Nalco Chemical Company testified. Nalco is located on the Calumet River north of the Garvey Grain facility (R. 9, 24). Both witnesses reported heavy grain dust settling in the Nalco parking lot; causing irritation, inconvenience and extra auto maintenance. Rosemary Hillebold stated that in order to drive home she must turn on her windshield wipers, that the grain dust sticks to her clothes, blows out of her air conditioner and gets in her eyes while driving (R. 9, 10). She further testified that she and other employees could not use outdoor tables for lunch in the summer because of the dust (R. 15). The problem exists predominantly from springtime until fall although it does occur in winter (R. 14). If it is snowing or raining the dust becomes "like oatmeal" and must be cleaned off with a scraper (R. 18). Leroy Tenner reinforced Ms. Hillebold's testimony and further stated that he had to change his oil filters more frequently on the car he drove to work than he did on his wife's car (R. 43). During wet weather the grain makes the parking lot slick, a driving hazard (R. 33). Mr. Tenner stated that as the boats Respondent fills with grain were loaded they became heavier, sinking further into the water, leaving a gap between the feed hose and the top of the boat or ship (R. 27). The problem appears to be most predominant during the loading of ships with grain and with south or southwest prevailing winds (R. 10, 25, 26, 33).

An engineer from the Agency, Laxmi Kesari, stated that Nalco, U.S. Steel and a City of Chicago pumping station are all north of Respondent's facility (R. 51). He observed dust in both the parking lot of Nalco Chemical and the City of Chicago pumping station (R. 54). Mr. Kesari testified that when unloading grain by rail Respondents unload in an area covered by a shed open at both ends (R. 58). Grain is also transferred internally from silo to silo (R. 58). Both these

activities emit dust (R. 58). The Main House and the South Annex are controlled by baghouses but the North Annex has only a cyclone (R. 58, 59). Mr. Kesari stated the cyclone is not considered a very efficient system (R. 59). Mr. Kesari could see the dust coming out of the cyclone (R. 59). Mr. Kesari made an inspection in June 1972 after which a warning letter was sent by the Agency to Respondent to inform Garvey Grain of the situation (R. 66, 67). Mr. Kesari stated that the basic source of emissions was the loading operation followed by emissions from the unloading of grain (R. 67).

Mr. Kesari based on his background and experience stated that the loading emission problem could be controlled to a certain extent if not a hundred percent (R. 69). This has been done at several other facilities by use of a baghouse and running air in a counter-current to the grain flow (R. 70). An estimate of price was between ninety and one hundred thousand dollars (R. 71). A baghouse for the North Annex was estimated to cost sixty to seventy thousand dollars (R. 77).

The next set of hearings was more than a year later, October 24, 25, and 26, 1976. At this hearing all witnesses from the previous hearing were cross-examined and Respondent's case was presented. It was pointed out that there are two other grain companies within one to one and a half miles from Garvey Grain; however, Mr. Kesari has not seen emissions at either of these facilities and both are too far away to be seen from Respondent's site (R. 142, 143).

Mr. Walter Pearson, project manager at Garvey Grain, Division of Garvey International testified. Garvey receives by rail gluten feed, hominy feed, malt sprouts and a multitude of other grain by-products (R. 174). After weighing and storing the by-products are pelletized and stored again awaiting shipping. At shipping the pellets are weighed and loaded on vessels (R. 174). Ninety percent of the shipping is by barge or ship (R. 175). Occasionally some material will go out by hopper car (R. 175). Title to the grain transfers to the customer after the grain leaves the scale and the weight is recorded (R. 182). Garvey employees do not do the loading (R. 184). Loading arrangements are made by the customer; frequently they use the Chicago Grain Trimmers Local or any of a number of other companies to do the loading (R. 184). The fact that Garvey equipment is used to load is undisputed. The spout the grain comes out is a telescopic spout that has three-way articulation which can be sleeved in or out, as a trombone would be (R. 183).

Since the first hearing some of the emission control equipment has been changed. Because of the dust blowing at the unloading of the railroad cars the end of the area was enclosed to prevent dust blowing (R. 219). The North Annex emissions were previously only controlled by cyclones (R. 58, 59). The installation of a baghouse for the North Annex was completed during the summer of 1976 (R. 200, 201). This leaves the loading of the vessels as the main emission source.

Since Garvey purchased the facility in 1969 it has spent \$724,512 on pollution control equipment (R. 200). Respondent has indicated that \$150,000 has been committed to resolve the emission problem concerning the loading of barges and ships (R. 217, 268).

The Board finds the facts in this case show that Respondents are in violation of Section 9(a) of the Act. Respondent's particulate emission is an unreasonable interference concerning the life and property of employees at neighboring facilities. Prior to determining what remedy is necessary in this case the Board must consider the factors of Section 33(c) of the Act. The Board must consider the character and degree of injury or interference with the health, welfare and physical property of the people. The interference with the lives of employees of Respondent's neighbors is great. The particulate emission causes discomfort, cleaning problems concerning clothes and automobiles, additional maintenance to automobiles, interference with vision while driving and during wet weather slick parking lots. Nalco Chemical Company uses a small industrial vacuum cleaner to clean out their drainage area and its parking lot that would be unnecessary but for the particulate emissions from Respondent's facility (R. 30). This interference is both a nuisance and an economic injury to the neighboring facilities.

A grain facility such as Respondent's clearly has an important social and economic function. The value is diminished by the injury caused to neighboring facilities. The site of Respondent's facility is not in issue. The area is industrial in nature (R. 51). The facility was pre-existing to Garvey's purchase of it in 1969 (R. 193).

The technical practicability and economic reasonableness of eliminating these emissions is a more difficult question. As previously noted, Respondent has indicated it would spend \$150,000 to eliminate this problem. The simplest method of elimination is a cloth-like umbrella or tarpaulin covering (R. 72, 209). However, the Trimmers' Union has refused to

operate in the Chicago area with that type of operation because of the need for some kind of self-contained breathing apparatus (R. 209). Mr. Pearson has observed some other facilities with grain loading operations but does not feel they are feasible for Garvey (R. 208, 209). Garvey has received four different estimates for a shuttle belt system of loading (R. 215). The estimates run from \$1,200,000 to \$1,800,000 (R. 215, 216). Only the latter figure pertains to a system that would load both barge and ships as is necessary in Respondent's facility (R. 216). In contrast, Mr. Kesari, the Agency's witness, has also visited several facilities, Continental Grain, Northwest Malt Company, and Rail-to-Water Corporation, all in the Chicago area (R. 69). Mr. Kesari states that Respondent could control its emissions with a baghouse and running air in a counter-current to grain flow (R. 70). This estimate from the 1975 hearing with inflation would still be under \$150,000. Respondent declined to spend \$50,000 for an engineering study of the feasibility of controlling the emissions (R. 207). There was no guarantee of a result (R. 208). Garvey did receive a six month grace period for compliance with the Chicago Municipal Code, until January 18, 1977 (Resp. Ex. 1). This was basically to allow another similar facility time to work on a resolution. Mr. William Swaby, President of Garvey Grain, stated that the Chicago facility in fiscal 1976 made a profit of \$682,000 from its merchandising operation and lost \$233,000 on grain loading, making a total profit of \$449,000 (R. 262, 263).

While Garvey has eliminated most of its emissions since purchasing the plant; the record is not clear whether this was done to abate pollution or to recover products. Mr. Pearson testified (R. 175) that: (1) the facility received milled by-products of grain which are put through an extruder to increase product density, and (2) the particle size of the gluten feed which is 70 to 80 percent of the total business is very, very fine (R. 178).

The chronology of Garvey's abatement plan (Resp. Ex. 2) shows five phases extending from 1970 through 1975 with an average annual expenditure of over \$100,000. Phase 4 was completed in April, 1976 and \$150,000 has been committed (R. 268) to complete Phase 5, abatement of emissions during vessel loading. Because of Garvey's abatement efforts the Board finds that a penalty is not necessary to aid in the enforcement of the Act.

The record in this case does not provide a clear answer to the question of whether it is economically and technically practicable for Garvey to attain compliance. Because of this situation the Board will require Garvey to meet with the Agency

and within 90 days of this order determine what steps can be taken to achieve compliance. Respondent will be required to make two quarterly reports to the Agency thereafter. At the end of a period of one year both the Agency and Respondent shall report back to the Board for final determination of this matter. If at any time during the year Respondent comes into compliance the final reports will be submitted to the Board at that time.


This Opinion 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. Garvey Grain, Inc. is found to be in violation of Section 9(a) of the Environmental Protection Act.
2. Respondent shall meet with the Agency and submit reports in compliance with the above opinion.

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 March, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board