

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1978

OSCAR MAYER & CO.,)
)
) Petitioner,)
)
) v.) PCB 78-14
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

MR. PERCY L. ANGELO, MAYER, BROWN & PLATT, APPEARED ON BEHALF OF PETITIONER.

MR. RUSSELL R. EGGERT, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF RESPONDENT.

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

On January 20, 1978, Oscar Mayer & Co. (Oscar Mayer) filed this Petition for Review of Permit Denial before the Board alleging that the Illinois Environmental Protection Agency (Agency) erred in its denial of Oscar Mayer's permit application for a continuous large sausage process (CLSP) at the company's Chicago plant. A hearing was held in this matter on October 3, 1978. No citizens attended the hearing, and the Board has received no public comment in this matter.

Early in this proceeding a question arose concerning the scope of discovery in an action under Section 40 of the Act to contest Agency denial of the permit. The Agency took an interlocutory appeal from an order of the hearing officer compelling answers to Interrogatories which the Agency claimed were beyond the scope of discovery in this type of proceeding. The Board accepted the interlocutory appeal and, in a comprehensive interim order, carefully delineated the scope of discovery in this case. In its interim order of June 14, 1978, the Board stated:

The ultimate question to be decided by the Board in this matter is whether or not emissions from the process for which the permit was denied exceed limitations of Rule 203(b) of Chapter 2 of the Board's Regulations. Essential to the resolution of the question is a determination of the Board of the actual weight of the material introduced into the process per hour, as defined by Rule 201 of Chapter

2 of the Board's Regulations. To do so the Board needs to know only the weight of each material involved; the Board can then determine which of these materials the Board intended, by Board Regulation, to be included in the proper calculation of the actual weight introduced into the process per hour. How or why the Agency arrived at a different conclusion on the same facts is simply not relevant to the Board determination.

At the hearing, the parties presented a Stipulation of Fact for the Board's consideration in its deliberations. In addition both parties presented briefs based upon the facts contained in the Stipulation.

The subject of this permit review proceeding is the continuous large sausage process (CLSP) operated by Oscar Mayer at its meat processing plant in Chicago, Illinois. In this process large loaves of sausage products are progressively smoked, cooked and chilled. In order to produce the smoke needed in the CLSP, hardwood chips are fed into smoke generators, the product of which is fed directly into the smoke zone of the CLSP for the smoking portion of production process. The productivity of the CLSP is related to the amount of woodchips and the amount of meat used; the greater the amount of meat processed, the more smoke required and the greater the amount of woodchips consumed. The CLSP processes approximately 12,000 lbs./hr. of meat under normal conditions.

An Agency permit to operate the CLSP had been obtained by Oscar Mayer in 1973. Application for that permit relied on a process weight rate of 12,000 lbs./hr., including both meat and the hardwood chips used to produce the smoke. Oscar Mayer filed a renewal application in October, 1977, which was essentially identical to the application previously granted. This renewal application was denied by the Agency, which alleged that the CLSP's particulate emission rate of 1.8 lbs./hr., as calculated by the Agency using standard emission factors, exceeded the allowable emission rate of 203(b) of the Board's Air Regulations. (Stip. p.3) In its determination, the Agency excluded the weight of the meat introduced into the process from the calculation of process weight rate. As a result, the Agency has determined allowable emissions from the process to be 0.58 lbs./hr., while inclusion of the meat in the calculation would result in an allowable emission rate of 13.6 lbs./hr. It is therefore obvious that inclusion of the weight of the meat is essential if the allowable emission rate is to meet the Agency's assumed emission rate of 1.8 lbs./hr. The Board finds that the question of inclusion of the weight of the meat in the calculation of process weight rate is determinative in this case.

In a recent decision, United States Steel Corp. v. EPA, PCB 77-317 (June 22, 1978), the Board considered the question of process weight rate. Both in that opinion and in the original opinion in R71-23, which adopted the process weight rules, the Board has stressed that the purpose of process weight rates is to relate the allowable emissions directly to the productivity of the particular process. The Board finds that the productivity of the process in this case is the amount of the meat produced, and that the allowable emissions are therefore directly related to this parameter. That the emissions from the CLSP will increase or decrease as the weight of the meat processed increases and decreases appears obvious. It is somewhat less obvious that the total emissions from the process will increase or decrease with a change in the amount of wood chips consumed since the burning of the chips constitute only a part of the total process.

Since the weight of the meat is to be considered for the purpose of determining the process weight rate and the allowable emissions under Rule 203(b) of Chapter 2 and since the stipulated facts herein indicate that such inclusion will result in compliance with the rule, the Board finds that Oscar Mayer has met its burden of proving it will not cause a violation of the Act or Regulations and is entitled to an operating permit for its CLSP operation at the company's Chicago plant.


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

ORDER

It is the Order of the Pollution Control Board that the Oscar Mayer & Co. permit application for its continuous large sausage process at the company's Chicago, Illinois plant be remanded to the Illinois Environmental Protection Agency for further action consistent with this Opinion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 14th day of December, 1978 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board