ILLINOIS POLLUTION CONTROL BOARD
November 28, 1972

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 72-204
UNION ELECTRIC COMPANY, Respondent.	)	

Thomas A. Cengel, Assistant Attorney General, for the Environmental Protection Agency;
Mr. Robert Broderick for Union Electric Company.

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

This Complaint was filed on May 12, 1972, and charges the Respondent, Union Electric Company, with causing or allowing the "discharge or emission of dense smoke in violation of Rule 3-3.122 of the Rules and Regulations Governing the Control of Air Pollution, continued effective pursuant to Section 49 (c) of the Environmental Protection Act". The violations allegedly occurred at Respondent's Cahokia Plant in Sauget, Illinois, on January 22 and 26, 1971, and November 1, 1971.

Respondent's Cahokia Plant is an electric power generating facility with a capacity of approximately 325 megawatts (R. 59). It has 8 coal fired boilers and 14 oil fired boilers, the coal fired boilers accounting for a maximum of 141 megawatts of the facility's capacity, and the oil fired boilers accounting for the remainder (R. 59). The facility has six stacks, numbered one through six, which extend approximately 329 feet from ground level (R. 57-58). The number 2 stack, which is oil fired, is the stack involved in the alleged violations of January 22 and 26, 1971 (R. 19). The number 6 stack, which is coal fired, is the stack involved in the November 1, 1971 allegation.

On the morning of January 22, 1971, the Agency inspector went to the facility and monitored the number 2 stack for approximately 30 minutes, from 9:00 a.m. to 9:30 a.m. (R. 19). He was stationed approximately 1/4 mile to the southeast of the facility (R. 19). He stated he observed a smoke emission of approximately 70% density, which translates to a reading of 3-1/2 on the Ringelmann chart (R. 20). He took these readings every 15 seconds for a continuous period of 30 minutes (R. 20). He was not sure if he had used his Ringelmann Chart at the time (R. 40).

On the morning of January 26, 1971, the same inspector observed that the number 2 stack from a spot approximately 1 mile east of the facility (R. 22) had an emission with a Ringelmann reading in excess of 2 (R. 24) from 8:21 a.m. to 8:31 a.m. (R. 23), except for approximately one minute when the reading was discontinued because the plume from another stack was interfering with the plume from the number 2 stack (R. 24). Again, the witness did not remember if he used his Ringelmann chart (R. 40).

On the afternoon of November 1, 1971, the witness returned to the facility with another Agency inspector. They observed the number 6 stack for approximately 10 minutes (R. 28) with the witness taking the Ringelmann reading as his companion held the Ringelmann chart (R. 41). The witness stated that he obtained a reading of 3 on the Ringelmann chart, (R. 29).

In defense, the Respondent's witnesses testified that Respondent has a television installation for monitoring the stacks at its facility (R. 59 et seq.). The installation was established in May of 1970, and was in operation on all three dates alleged in the Complaint (R. 60, 71). The camera is mounted on a pole approximately 300 feet from the main building and about 12 feet off the ground, and is tilted upward looking toward the plant (R. 60). The signal is carried by a coaxial cable to five television monitoring sets which can be observed by the company personnel who are firing the boilers (R. 60). The installation has a tape recording device which provides a record of the television picture (R. 63). The company rotates four reels of tape, each reel being used for approximately one week (R. 63), giving the company a record of its stacks dating back three weeks (R. 63).

The company received a letter dated February 5, 1971 from the Agency notifying it that there were possible Ringelmann violations (R. 62; Agency Exhibit 8). After finding out from the Agency the exact times for which violations might have occurred, the Company viewed its tapes (R. 64), and decided that in its judgment there was no violation of the regulations (R. 65). However, the plant superintendent who viewed the tapes had no training in Ringelmann chart reading (R. 74). After this review of the tapes, the company reused them, thereby erasing whatever documentary proof it had regarding the condition of the stacks. The vice-president in charge of operations for the Respondent replied by letter dated February 22, 1971 (Agency Exhibit 7) to the Agency's letter of February 5, 1971. This reply neither admitted nor denied the validity of the Agency allegation, although it did acknowledge "heavy stack emissions." Fifteen months later, the Complaint was filed.

The company "received word" on December 20, 1971 that a possible violation occurred on November 1, 1971 (R. 71). But by that time the television monitoring tapes had already been reused (R. 71). The company makes much of photographs taken by the Agency (Respondent Exhibits A and B) on November 1, 1971, which photographs do not show a violation. The Agency witness conceded that the smoke was "quite light" at the time of the photographs (R. 34). The photographs, however, were taken at 1:45 p.m. (R. 34), which is approximately fifteen minutes after the violation allegedly occurred. Thus the photographs came too late to rebut the evidence of a violation.

We find Respondent's defenses unconvincing. Although the Respondent did review the tapes of the January, 1971 allegations, it chose not to preserve them. In any event, Respondent's judgment as to what the tapes showed was not based on any formal training in a smoke reading school, whereas the Agency witness based his judgment on extensive experience and training in the the reading and evaluation of smoke (R. 12, 13, 52). We therefore find that a violation of Rule 3-3.122 occurred on January 22, 1971 and January 26, 1971.

The Company's defense to the November 1, 1971 allegation is even weaker. All the company relied on are two photographs which show the plant sometime after the alleged violation had taken place. We accordingly find that a violation of Rule 3-3.122 also occurred on November 1, 1971.

Having found violations as alleged, we turn now to the problem of remedy and penalty. The problem of remedy is easily solved in this case: we will order the Respondent to cease and desist from further violations of Rule 3-3.122. The problem of penalty is somewhat more complex. For reasons described below, we do not believe a large money penalty is justified by the facts of this case. We note that the January, 1971 violations dealing with stack number 2 occurred nearly two years ago; that the Complaint was filed on May 12, 1971, nearly a year and a half later; that the hearing was held on October 13, 1972; and that no other problems from stack number 2 apparently occurred during the long period of time the Agency had this facility under surveillance. We therefore conclude from this record that the violations of January 22 and 26, 1971 were temporary and minor and that whatever caused them has been corrected. The November 1, 1971 violation was similarly temporary, having occurred for approximately 10 minutes, and its cause has apparently also been corrected. We are therefore imposing a small money penalty of $100 for each violation, for a total money penalty of $300.00.

This opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

It is the order of the Pollution Control Board that:

1. Respondent shall cease and desist from any further violations of Rule 3-3.122 of the Rules and Regulations Governing the Control of Air Pollution resulting from emissions from stacks numbers 2 and 6.

2. Penalty in the amount of $300.00 is assessed against the Respondent for violations of Rule 3-3.122 of the Rules and Regulations Governing the Control of Air Pollution. Payment shall be made within 35 days by certified check payable to the State of Illinois, and sent to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 28th day of November, 1972, by a vote of 5 to 0.

Christan L. Moffett