

ILLINOIS POLLUTION CONTROL BOARD

January 3, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 74-216
)
 HEICK DIE CASTING CORPORATION,)
)
 Respondent.)

Jeffrey S. Herden, Assistant Attorney General for the EPA
Richard J. Riordan, Attorney for Respondent

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

On June 7, 1974 the Environmental Protection Agency filed a two count Complaint against Respondent Heick Die Casting Corporation. Respondent operates a job shop facility in Chicago at which parts are made for automobile and lawnmower manufacturers.

In one count it was alleged that Respondent had operated its plant without operating permits in violation of Rule 103(b)(2) of the Air Pollution Control Regulations and Section 9(b) of the Environmental Protection Act. The record reveals that the Heick Company now has an operating permit. However, the parties stipulated that Respondent "from June 1, 1973 until the filing of the Complaint herein has operated various emission sources: to wit, twenty gas fired reverberatory furnaces, pot furnaces, die casting machines, and a cyclone device without first having obtained operating permits from the Environmental Protection Agency as required by Rule 103(b)(2) of the Illinois Pollution Control Board Rules and Regulations, Chapter 2: Air Pollution." We therefore find Respondent guilty of operating its plant without operating permits in violation of Rule 103(b)(2) as specified in the Complaint.

The EPA also alleged that on May 16, 1974 Heick had violated Section 4(d) of the Act by refusing to allow Agency employees to inspect its job shop facility. Respondent denied this allegation. Testimony was taken at a public hearing and the parties subsequently filed written arguments.

It appears from the evidence that employees of the Environmental Protection Agency inspected Respondent's plant on January 11, 1974.

As usual, the Agency inspector appeared without advance warning but on that occasion there was no difficulty in completing the inspection. Mr. William Pondolesic, Vice President and General Manager of the Heick Corporation was with the Agency Inspector for approximately 3 hours on January 11, 1974 while the inspection was completed.

Four days later Respondent received notification of a possible permit violation. The same day, January 15, 1974, Respondent wrote to the Agency requesting the necessary permit application forms. After a couple of weeks the permit application forms were received by the Company but the Company employees were unable to complete them without assistance. A Company employee then attended one of the seminars which are regularly conducted by the Agency at its office in Chicago. When he returned from the seminar he notified his superiors that they had not received the proper forms and that the preparation of the forms was beyond the technical competence of Respondent. Bids were then received from consulting firms and early in March a consulting engineer was hired to complete the application. The application was in fact completed late in May and was filed with the Agency resulting in the issuance of an operating permit.

On May 16, 1974 Agency employee Villalobos who had previously inspected the premises paid another visit to Respondent's plant. He was accompanied by EPA employees Thayil and Miller. Thayil had been hired on May 1, 1974. He was the only Agency witness who testified in the case.

William Pondelicek, the General Manager of Heick, was occupied with a customer at the time the Agency employees arrived around 2 p.m. He later testified that the time was not convenient since he could not afford to spend another 3 hours with the Agency while a customer was sitting there. Pondelicek testified that his Company is "relatively small" and at that time it was his custom to handle matters of this kind himself. Pondelicek further testified that he asked Villalobos "is this inspection necessary?" and that Villalobos said "no" (R. 19). Boniface Thayil does not recall that conversation. Thayil testified that the General Manager refused to allow the Agency to inspect the plant because he was busy.

Section 4(d) of the Environmental Protection Act provides:

"The Agency shall have authority to enter at all reasonable times upon any private or public property for the purpose of inspecting and investigating to ascertain possible violations of the Act or of Regulations thereunder, or of permits or terms or conditions thereof in accordance with constitutional limitations."

Thayil testified that he and his two companions had several purposes in going to the plant:

1. To see if the operation had changed since the January inspection.
2. To become familiar with a die casting plant operation, apparently for educational purposes.
3. To become familiar with the operation in order to provide assistance in the permit application.

Thayil's testimony was at times confusing and we have the impression that he personally was not precisely sure of the nature of the visit and that it was largely to be instructional from his viewpoint.

At page 48 Thayil testified:

"I must say this, that I had joined the Agency the 1st of May. We visited on the 16th of May, and I was not at all familiar with the, you know, process of obtaining permits and different stages that we were involved in. So, actually, I was not at all familiar with what, you know, what stage this particular firm was at with regard to permits. I knew nothing, but I knew Mr. Miller was from the Permit Section, and Mr. Villalobos had mentioned that he could be of assistance to the Company in filling out their forms. But whether it had in fact been, you know, what stage of the process it was, where it has to go, I knew nothing about that at that period of time."

We are not impressed by the Agency action in this case. The right of inspection is extremely important to the pollution control effort in Illinois. Perhaps the Agency wished to firmly establish that right of inspection with a test case. If so, we believe that the Agency could have selected a better vehicle. That right of inspection is not available for the purpose of educating new employees in the workings of a manufacturing system. We are not convinced that the inspection was for the purpose of assisting Respondent in the preparation of its permit application. The record indicates that the only assistance given by the Agency is in the conducting of a seminar, a procedure which had already been attempted. If the Agency wished to assist Heick in completing the forms it should have stated so and undoubtedly the General Manager would have put the consulting firm in contact with these employees.

Clearly, it would be proper for the Agency to inspect any plant to determine whether there was a possible violation of the Act or Regulation or of a permit. This right of inspection exists even though the plant has recently been inspected. In this instance, however, the leader of the inspecting team apparently indicated that the inspection was not necessary. This would be entirely consistent with the fact that Heick was not in violation of any emission standard and was not regarded as a polluter either before or after the visits or the filing of an application for permit.

Under all of the circumstances we cannot find Respondent guilty of violating Section 4(d) of the Act. We stand ready to enforce the right of inspection in a proper case.

For the permit violation a penalty in the amount of \$500 seems appropriate. We are not given any reason for the failure to obtain the permit prior to Agency inspection in January 1974, but the record does show that Heick pursued the matter with diligence following that Agency inspection.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that:

Respondent Heick Die Casting Corporation shall pay to the State of Illinois by February 15, 1975 the sum of \$500 as a penalty for the permit violation found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 3rd day of January, 1975 by a vote of 5 to 0.

Christan L. Moffett