ILLINOIS POLLUTION CONTROL BOARD
February 14, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#72-160
v.	)	
	)	
KALUZNY BROS., INC., a corporation	)	

NICHOLAS G. DOZORYST II, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
JOHN J. McGARRY, OF DUNN, STEFANICH, McGARRY & KENNEDY, APPEARED ON BEHALF OF KALUZNY BROTHERS, INC.

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against Respondent, owner and operator of a facility for the inedible rendering of animal scrap, bone and grease, located on Mound Road in the City of Joliet. The complaint alleges that since July 1, 1970, Respondent operated the facility so as to cause air pollution, in violation of Section 9(a) of the Environmental Protection Act and that on or about January 8, 1972, Respondent installed a new shell and tube condenser having 977 square feet of surface area, which equipment was capable of causing air pollution, or was designed to prevent it, and was new equipment as defined in the relevant Regulation.

The Agency alleges that the installation aforesaid was done without a permit and violated Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Act. Answer was filed by the Respondent admitting the operation of the facility, but denying the causing of air pollution or the violation of the Regulation requiring the obtaining of a permit for the installation made.

Hearing was held on the complaint and answer on November 27, 1972 in Joliet. We find the Respondent to have caused air pollution and to have made the condenser installation without the necessary permit. We assess a penalty in the amount of $2,000 for the violations found, direct Respondent to cease and desist the violations of the relevant Rules and statutory provisions, and further direct the submission of a plan to assure the abatement of odors within 60 days from the date of this Opinion.

There is no major disagreement on the facts of the case. Respondent's operation consists of the rendering of meat scraps and bones in the manner characteristic of operations of this kind. The raw material is ground in a large grinder and then placed in three enclosed cookers located inside the plant. Gases and vapors from the cooking process are vented to a shell and tube condenser where the condensable gases are condensed to water and disposed of in the plant's sewage system. The non-condensable gases are then drawn from the top of the condenser by a vacuum pump and a chlorine solution injected to eliminate the odor by oxidation. The non-condensable materials are then pumped to the bottom of a six-foot tank and diffused through six feet of water. The condenser itself is a cylindrical shell containing a substantial number of tubes through which the steam and vapor to be condensed passes. The exterior of the tubes is cooled by water which causes the condensation and ultimate disposal to the sewer system. Measurement of the size of the condenser is in the square footage of the tubes involved. In 1966, a tube condenser was installed containing approximately 550 square feet of condensing surface. In the summer of 1971, this unit ceased to operate adequately as a consequence of lime deposit forming on the tubes of the condenser due to the hardness of the water. The formation of the deposit prevented the cooling water from coming in contact with the tubes and, accordingly, the cooling effect of the water was nullified and the steam was not condensed into liquid form. A new condenser was purchased having approximately 975 square feet of surface area. New heads were fabricated to enable installation of this unit. Subsequent to installation of the new condenser and as a consequence of inspection made by Agency personnel, the Agency advised the Respondent that a permit would be needed in that the Agency construed the new condenser as "new equipment" and one that either caused or abated air pollution necessitating compliance with Rule 3-2.110. Application was made to the Agency, but denied, the Agency permit personnel advising Respondent that it would not approve the installation without the addition of an afterburner. Evidently, the Respondent made no further effort to pursue the matter of permits, but withdrew the application in the belief that the new condenser was not "new equipment" as defined in the Regulations, and that accordingly, no permit was needed for the installation.

We believe the Respondent clearly wrong in its interpretation of the Regulations and hold that the new condenser was new equipment as defined in the Act and requires the appropriate permit. Rule 3-2.110 provides:

> "A permit shall be required from the Technical Secretary for installation or construction of new equipment capable of emitting air contaminants to the atmosphere and any new equipment intended for eliminating, reducing or controlling emission of air contaminants."

New equipment is defined as follows:

"a. Equipment, the design of which was less than 50% completed on April 15, 1967.

b. Equipment which is altered or modified such that the amount of air contaminant emissions is increased 15% or more."

Respondent advances three theories under which it would not be covered by the above Regulations. It contends first that with respect to definition (b) the modification does not increase air contaminant emissions 15% or more. While this may be true, it loses sight of the other definition of new equipment, which is equipment less than 50% completed on April 15, 1967. Next, Respondent contends that this is not a replacement of new equipment but rather maintenance of existing equipment, and lastly, that the totality of the equipment involved, namely, the cooker, condenser, vacuum pump, injecter of chlorine solution and bubbling devices, all constitute the "equipment." We cannot accept these theories. Were we to do so, the totality of all equipment in any plant would be considered as a single piece of equipment and no installation with respect to any portion of it, would constitute the installation of new equipment.

While all elements are interrelated, we believe that the new condenser is of a sufficient importance and magnitude to be considered separately, and, accordingly, view it as a single integrated piece of equipment. The increase in size over the previous unit, its special construction and the need for special fittings to adapt it, all lend support to this view. Accordingly, we find that the new condenser is new equipment for which a permit is needed under the relevant provisions of the Rules and the Act.

We further find that the action of the Agency in denying the permit because of the absence of an afterburner, was valid. Undisputed testimony brought out at the hearing indicates that even when the condenser is operating properly, it achieves only a 50% reduction in odors, whereas with the presence of an afterburner, 99% efficiency can be achieved. (R. 52-61).

Section 39 of the Environmental Protection Act mandates the Agency to issue a permit only when there is proof by the applicant that the facility involved will not cause violation of the Act or the Regulations thereunder. It was well within the province of the Agency to make a determination that the condenser alone was not adequate to prevent air pollution as, indeed, the facts of this case evidence.

Further, it was not incumbent upon the Respondent to make a unilateral determination that the permit was not needed or that the conditions were improper. If conditions had been imposed which the Respondent felt unwarranted, appeals should have been taken to this Board in an appropriate procedure. Respondent acts at its own risk when it proceeds on the assumption that no permit was necessary. We shall direct Respondent to obtain the necessary permits for the operation of its air pollution abatement equipment and hold it to have been in violation for failing to have done so in the past.

The evidence likewise supports the allegations with respect to the causing of air pollution. Respondent's operation is conducted in a highly industrialized area. It processes approximately one million pounds of material a week collected from supermarkets, locker rooms, residences and slaughterhouses. The end products of the operation are tallow, grease and solid protein. In the immediate vicinity of the Respondent's operation are the Johns-Manville Company, Caterpillar Tractor, a large chemical plant and an electrical generating station of Commonwealth Edison. Also in the vicinity of Respondent's operation are five garbage dumps, three blacktop companies, a brickyard and a tire re-capping facility. (R158, Rs.X1) Notwithstanding the foregoing competitive odor-producing enterprises in the vicinity of Respondent's plant, it is evident from the record that Respondent's odor emissions are detectable, burdensome and constitute air pollution as defined in the statute.

Howard Martinson of the Joliet Police Department equated the odor to that of a person who had been burned to death (R. 5). He identified the plant as the source of the odor, determined by inspection. His home is located north-northeast of Respondent's plant and the odors were most noticeable during periods of high humidity and when the wind direction was from south to north. Odors were more predominant during summer months and particularly noticeable during evening hours. Odors were detected during the summer of 1972, precluding the use of the witness' yard during the evening periods. While odors from other sources were occasionally detected, this witness was able to distinguish the odor emanating from Respondent's plant.

Joseph Pillion testified that he lived north and slightly east of Respondent's plant and that the odor he experienced was similar to that of the cooking of rancid meat. He likewise had the ability to detect the Respondent's odors from other industries in the area such as the odors from the chemical and power plants and the nearby garbage dumps. The odor was particularly noticeable when the wind blew from the south and southwest. Odors were experienced during both 1971 and 1972, particularly in the summers, during periods of high humidity and most often in the evenings. The odor affected his ability to sleep with open windows, and on some occasions, forced him to leave his home and was a source of embarrassment when he entertained company (R. 20).

Dorothy Piunti testified that the odor she experienced was similar to the cooking of spoiled pork. She lives approximately two miles north and east of the Respondent's facility and could distinguish the odors caused by Respondent from those emanating from other sources in the area. She experienced odors ranging from the spring of 1971 to the fall of 1972. As with previous witnesses, she testified that the odors were most noticeable during warm weather, during periods of high humidity during evening hours and when the wind was blowing from the south or southwest. She testified that the odor precluded use of her yard for outdoor activities and that the odor permeated her home. She stated that the odor had caused her nausea and headaches (R.32).

Robert L. Murray, Director of the Will County Health Department, testified to his experience in endeavoring to locate the source of odor complaints during September of 1971 and tracing it to Respondent's operation (R.32).

Steven Rosenthal, an Engineer of the Environmental Protection Agency, testified that his in-plant inspection indicated that the venting of non-condensible gases into the atmosphere produced a major source of odor. His inspection indicated that major sources of odor from Respondent's operation were inadequate control of gases from cooking odors, emissions from screw processes,and from the perforated pans which received materials from the cookers, and poor housekeeping as a result of which material was collected on the floor and elsewhere (R. 50). He testified that no more than a 50% odor abatement efficiency could be expected from the use of the condenser alone and that scrubbing equipment or afterburners were necessary to achieve odor reduction efficiencies between 95% and 99%. (R.52-64).

Sharon Sherrell, a witness introduced by complainant, while not refuting the emission of odors from Respondent's facility, stated that other sources of odors were equally or more objectionable. Wilbur Dronen, Personnel Services Manager of Caterpillar Tractor Company, testified to complaints he had received as a result of Respondent's operation and odor emissions (R. 102).

Fred D. Bennett, while testifying that the emissions of Respondent were "just good, healthy odors" (R. 120) sold Respondent the land on which the plant is built and still owns property in the vicinity of the plant (R. 117). Charles E. Lowe, an inspector of rendering plants for the Illinois Department of Agriculture, testified that Respondent's housekeeping operations were highly satisfactory and that, in his judgement, there was no odor problem (R. 146). He had been in the rendering business for 30 years prior to his present employment (R. 148).

We believe the Agency has adequately proven its case both as to the need for a permit for the installation of the condenser and the causing of air pollution as defined in the Act. We find Respondent to have violated Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Environmental Protection Act, both of which require the obtaining

of a permit from the Agency for the installation of new equipment, contributing to or designed to prevent air pollution. We find that the new condenser installed is new equipment within the purview of the relevant Regulation. We further find that Respondent's operation has caused air pollution as defined in the Act in that the emissions found have unreasonably interfered with the enjoyment of life of the persons residing in the vicinity of the plant and constitute a violation of Section 9(a). We find this notwithstanding the presence of other odors which undoubtedly have a similar effect on the community. A 9(a) violation is sufficiently established if the contaminants emitted, either alone or in combination with other sources, create this result.

We direct the Respondent to cease and desist its odor emissions and to obtain a permit for the operation of its odor abatement facilities. We impose a penalty in the amount of $2,000 for the violations of the Act and Regulations found to have been committed as set forth above.

This opinion constitutes the findings of fact and conclusions of law of the Board. Mr. Dumelle will file a separate concurring opinion.

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of $2,000 is assessed against Kaluzny Bros., Inc. for violation of Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Environmental Protection Act in failing to obtain a permit for the installation of its condenser and for causing air pollution in violation of Section 9(a) of the Act. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. Within 60 days from the date of this order, Respondent shall cease and desist the causing of odor emissions so as to cause air pollution as defined in the Environmental Protection Act and shall, prior to said date, apply for a permit for the operation of its odor abatement equipment including the condenser heretofore installed.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 14th day of February, 1973, by a vote of 3 to 0.

Christan L. Moffett