

ILLINOIS POLLUTION CONTROL BOARD

December 6, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 73-343
)
 CHIPPEWA PAPER PRODUCTS COMPANY,)
 an Illinois corporation, PRAIRIE)
 STATE PAPER MILLS DIVISION,)
)
 Respondent.)

John Slattery, Assistant Attorney General for the EPA
Melvin I. Mishkin, Attorney for Respondent

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

The Environmental Protection Agency filed a Complaint alleging that Respondent, since September 27, 1972, has manufactured or processed asbestos-containing products without an Agency permit in violation of Section 9(b) of the Environmental Protection Act and Rule 622 of the Air Pollution Control Regulations. Respondent was also charged with operating its plant since March 1, 1973 without an Agency permit in violation of Section 9(b) of the Act and Rule 103 of the Regulations. A public hearing was conducted on October 18, 1973.

Chippewa Paper produces light weight chip and Kraft paper at the plant which it acquired from U. S. Industries, Inc. on September 27, 1972. The facility includes paper producing machines, asphalt saturators and a paper laminator. Asbestos in pellet form is fed into the paper machines to "avoid stickiness and to disperse formate materials". Over 500,000 lbs. of asbestos are processed per year.

Respondent admitted that it had not obtained operating permits from the EPA but said that "whether an operating permit is required by the Statute and Regulations cited is a conclusion of law".

Rule 103(b)(2) states: "No person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an Operating Permit from the Agency no later than the date shown in the following

schedule...Stone, Clay, and Glass Products and Paper and Allied Products Industry Operations...by March 1, 1973". (Note: Rule 101 of the Regulations defines an emission source as "any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere".) Rule 622 in part states: "after June 30, 1972 the manufacturing or processing of asbestos containing products is prohibited unless the person or entity in charge of such activity has obtained a permit from the Agency."

The evidence indicates that the finished paper product does contain asbestos (R. 12) and that particulates are emitted to the atmosphere through the plant stack (R. 30). Therefore, Respondent was required to obtain permits under Rule 622 and Rule 103.

No contention is made that emissions were in violation of Pollution Control Board Standards. The Agency investigation revealed only the permit violation (R. 42). The particulate emissions, as determined by stack test, were only .8 lbs./hr., far below the allowable emissions of 6.03 lbs./hr.

In mitigation of penalty Respondent established that it has owned the facility only since September 27, 1972. At the time the plant was purchased Respondent received an "Asbestos Toxicology Report" (Respondent Exhibit #1) and cover letter which had been written by Union Carbide Corporation in 1969. The letter stated in part:

"Attached is a toxicology report which should dispel any fears you have. As the report points out, there is no danger as long as the dust concentration remains below 5 parts per million per cubic foot of air. In considering the volume of your usage, the large volume of air within the plant, and the fact that you are handling asbestos pellets (which nearly eliminates the dust problem), it is inconceivable that the concentration would ever exceed the threshold limit".

Respondent's Division President Jerome M. Finder testified that he was first advised that "there might be a problem regarding the use of asbestos at the plant" in a July 2, 1973 letter from the Illinois EPA. He said that Respondent immediately engaged the services of a consulting engineer on July 20, 1973 to assist in obtaining the permits. A representative of the consulting firm then testified that most of the testing at the plant has been completed and that the application forms will be submitted shortly (R. 34).

The evidence, however, indicates that employees of the Respondent's corporation did learn of the permit requirement soon after the plant

was acquired in the Fall of 1972. In November 1972 Agency Investigator William Zenisek visited Respondent's plant where he met the Plant Manager, Mr. Baitinger and the Plant Engineer, a Mr. Kluge. Zenisek testified that after inspecting the plant he informed Mr. Kluge of the permit requirements. Both Zenisek and Kluge then went to Baitinger's office where the permit requirement was again discussed. The EPA investigator followed up by sending permit information to Respondent's plant within one week after his plant visit.

The Division President, Jerome Finder, was aware of the EPA investigation of November 1972 but said that he was not aware that permit application forms had been sent to the Company.

It was undoubtedly an oversight which caused Respondent to delay 10 months in seeking the necessary permits. We do not assume that Respondent was attempting to conceal its emissions which are well within the allowable Standard. However, the permit requirement is a vital part of the Air Pollution Control Regulations and it has been our custom to emphasize that fact by imposing a moderate penalty in cases such as this one. The record clearly proves that Respondent violated Section 9(b) of the Act and Rules 103(b)(2) and 622 of the Regulations. For these violations a penalty of \$200 seems appropriate.

ORDER

It is the order of the Pollution Control Board that:

1. Chippewa Paper Products Company shall pay to the State of Illinois by January 15, 1974 the sum of \$200 as a penalty for the violations 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.
2. Respondent shall apply for the required operating permits at the earliest possible date. If the application for operating permits has not been received by the Agency on January 15, 1974 the Agency shall report such fact to us along with a Recommendation for further action.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order was adopted this 6th day of December, 1973 by a vote of 4 to 0.

Christan L. Moffett