ILLINOIS POLLUTION CONTROL BOARD
August 1, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#72-70
v.	)	
	)	
SOUTH WEST REGIONAL PORT DISTRICT	)	

MR. ROBERT F. KAUCHER, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
MR. HAROLD G. BAKER, JR. OF WAGNER, CONNER, FERGUSON, BERTRAND & BAKER, APPEARED ON BEHALF OF RESPONDENT

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

Complaint was filed against South West Regional Port District by the Environmental Protection Agency alleging that from July 1, 1970 to the date of the filing of the complaint, including but not limited to January 20, 1971, February 1, 1971 and March 3, 1971, Respondent caused, threatened or allowed the discharge or emission of contaminants, including red aluminum by-product dust, into the environment from property owned or controlled by Respondent so as to cause, or tend to cause, air pollution in violation of Section 9(a) of the Environmental Protection Act.

The South West Regional Port District located in East St. Louis, Illinois, received by gift from the Alcoa Company, approximately 240 acres of land on which Alcoa had, since 1906, deposited aluminum tailings, which tailings were the residue from the manufacturing of alumina, the product used in the manufacturing of aluminum. Approximately 14,500,000 tons of this refuse had been deposited on the subject property prior to its acquisition by Respondent. The tailings had been deposited in water-filled depressions referred to as lakes and during the operation by Alcoa, appears to have been watered down by piping facilities installed by Alcoa.

Subsequent to the acquisition by Respondent in 1961 and later, (additional portions having been obtained following the initial acquisition), the watering procedure terminated although the depressions continue to hold water resulting from rainfall. The area holding the tailings is diked by a wall of gypsum and during most periods of the year sufficient water is present to minimize dust problems arising from the slag pile so formed. No additional tailings or slag have been added by Respondent since its acquisition in the

early 1960's. However, in times of drought and high wind, fine dust blows from the slag pile into the adjacent areas, creating substantial conditions of nuisance which, to date, have been unabated. That air pollution, as defined in the statute, has been created by this situation is abundantly clear from the record, nor is this conclusion challenged by Respondent.

Testimony of neighborhood witnesses manifest that during periods of dryness coupled with heavy wind, dust covers their homes, laundry and automobiles. Several witnesses testified that their health has been impaired as a consequence of inhaling the dust so generated and that their hair and skin have become inordinately dirty as a consequence. While the evidence indicates no toxic characteristics of the dust so created, air pollution is defined by the Act as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health or property or to reasonably interfere with the enjoyment of life or property". It is clear from the record that the circumstances above-described constitute an interference with the enjoyment of life and property and result in air pollution as defined in the Act. Cf. Employees of Holmes Bros., Inc. by F. Estel Williams, Chief Engineer v. Merlan, Inc. and L. Mervis, President; Environmental Protection Agency, Intervenor, #71-39, Opinion dated September 16, 1971.

One witness testified that on particular days when the wind was strong, the dust generated prevented him from seeing across the street (R.84). Another witness described the condition as "just like putting a red curtain down". Another witness testified that contact with the dust caused her face to swell and required medication in the form of shots and pills. On the three specific dates enumerated in the complaint, Environmental Protection Agency inspecters answered complaint calls from neighbors and inspected the property. In each case, the blowing of red dust was observed. (R.25, January 20, 1971). (R.27, February 1, 1971). (R. 28, March 31, 1971). On the last occasion, the inspector observed a cloud of red dust which could be observed from the office in Collinsville. One inspecter noted that "the whole area would be red, the houses, the porches, the streets. Everything would take on the shade of the red deposit".

Accordingly, we find that Respondent has caused air pollution in violation of Section 9(a) of the Environmental Protection Act.

The more difficult question is what to do about it. Respondent has investigated various possibilities of abatement. The most obvious method would be to move the pile. However, this would entail costs and procedures that are beyond the capability of the District.

Efforts to obtain State or Federal funding appear to have been fruitless. Some experimentation has been conducted with respect to covering or spraying the pile but does not appear to have been successful. A proposal to use horse manure generated at the nearby racetrack to abate the present nuisance was more visionary than practical and accordingly, abandoned. Efforts to stabilize the slag by plantings likewise suffered the same fate. Compacting also failed to produce satisfactory results and led to the loss of a bulldozer.

More recently, attempts have been made to find uses for the slag by the manufacture of such products as bricks and other products that would, if successfully processed, not only dispose of the refuse problem but also increase employment in the area, which is subject to a severe economic impact. Efforts are presently being made through the use of a German process to convert the slag into a useful product. The character of this product is not clear from the record but it appears that efforts are continuing to determine whether the aluminum sludge could be utilized in this respect (R. 130-132). If successful, this process will utilize the entire accumulated pile and terminate the problem. Board Member Dumelle suggests that contact be made with the United States Bureau of Mines for the consideration of a solution. (See Bureau of Mines research programs on recycling and disposal of mineral-, metal-, and energy-based solid wastes, by Charles B. Kenahan and Einar P. Flint. [Washington] U. S. Dept. of the Interior, Bureau of Mines [1971], Information Circular No. 8529). He further suggests that experimentation be conducted to determine whether sludge generated by the Metropolitan Sanitary District might be used for reclamation purposes as is being done in other parts of the State.

The record indicates that the Respondent, a State entity, has not called for a Referendum to levy any general obligation tax in consideration of the relatively high tax rate in an economically distressed area and has relied principally upon revenue bonds for its financing.

On the state of the record it does not appear that a penalty would be appropriate. The conditions giving rise to the alleged violation were inherited by Respondent. While Respondent has done little to abate the conditions, the available long-term alternatives do not appear particularly suitable or attractive unless a use can be found for the slag that would economically justify its removal. However, steps should be taken to abate this nuisance in the short run until a definitive use can be made of the pile. Facilities for wetting down the pile should be installed until such time as removal can be effectuated. Respondent acknowledges that this method appears both reasonable and feasible (R.155-157). We will keep this proceeding open to enable Respondent to submit to the Board, within 60 days from the date hereof, an interim plan for abatement of the nuisance so created pending ultimate disposal and removal of the pile. Upon receipt of the interim plan, we will enter such further orders as shall be appropriate.

At the hearing, Respondent raised the usual constitutional and statutory objections relative to the Board's power to impose fines and the delegation of authority by the Legislature to the Board. These contentions have been raised many times in previous proceedings and have been answered in detail by our former decisions. See Environmental Protection Agency v. Granite City Steel Company, #70-34, Environmental Protection Agency v. Modern Plating Corporation, #70-38. To the extent Respondent's arguments constitute a Motion to Dismiss, said motion is hereby denied for the reasons previously set forth.

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

IT IS SO ORDERED.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 1st day of August, 1972 by a vote of 5-0.

Christan L. Moffett