ILLINOIS POLLUTION CONTROL BOARD
November 11, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	PCB 71-231
	)	
	)	
REESE CONSTRUCTION COMPANY	)	

Mauricio Dominguez, Special Assistant Attorney General, for the Agency

William Stiehl, for the Reese Construction Company

Opinion of the Board (by Mr. Kissel):

On August 11, 1971, the Environmental Protection Agency (the "Agency") filed a complaint against the Reese Construction Company ("Reese") alleging that Reese had installed an asphalt plant near Greenville, Illinois without first obtaining a permit from the Agency as required by the Environmental Protection Act, Section 9(b) and the Rules and Regulations Governing the Control of Air Pollution, Rule 3-2.110. A hearing was scheduled and held on October 15, 1971 in Greenville before Gary Coffey, Hearing Officer. On the date of the hearing, the parties read a stipulation into the record, which stipulation contained the following relevant facts:

1. Reese began construction of its asphalt plant on or about April 13, 1971;

2. On or about May 4, 1971, Reese wrote to the Agency for forms to fill out for an installation permit application, but he received no response, so he wrote again on May 27, 1971;

3. On May 25 Reese was visited by an Agency employee who advised Reese how to fill out the forms;

4. The permit application was submitted on or about June 3, 1971, and after an inspection by the Agency on June 9, 1971, the permit was issued to Reese on June 21;

5. The plant began operation on July 12, 1971, and completed operation on August 10, 1971; and

6. The operation of the plant with the installed emission control equipment would not cause a rate of emission of contaminants into the atmosphere in excess of the maximum allowable rates set forth in the applicable regulations.

Testimony in the record showed that the plant involved here was a moveable asphalt plant. The plant had been installed and was operating at other locations in Illinois. The custom in this business is to operate the plant near where the asphalt is needed for roads, etc. The Agency had issued permits for the installation and operation of this plant at the other locations.

The sole issue in this case is whether Reese violated the law when it failed to obtain an installation permit before beginning the installation of the plant at Greenville. The applicable regulations reads as follows:

> "A permit shall be required from the Technical Secretary for installation or construction of new equipment capable of emitting air contaminants into the atmosphere and any new equipment intended for eliminating, reducing or controlling emission of air contaminants." Rule 3-2.110, Rules and Regulations Governing the Control of Air Pollution.

"New equipment" is defined as "equipment, the design of which was less than 50% completed on April 15, 1967." It is clear from the regulation that if the asphalt plant owned by Reese was "new equipment" as defined that an installation permit was required, and as admitted by Reese,not obtained until construction had begun. We have said before that the permit for installation must be obtained before construction is started because the Agency must evaluate whether the chosen site is one on which the plant should be constructed. If a person begins installation before applying for a permit, this puts the Agency in an awkward position because if it denies the permit, the person would have already spent money and time in a non-productive effort. This, of course, could be financially harmful to the person who would then be required to tear down what he had already begun constructing. Thus, the requirement that the permit be applied for and received prior to construction begins is really a protection for the person constructing the facility as well as for the State.

Now the question of whether this is new equipment. While the record is clear that the asphalt plant was in existence before April 15, 1967, we still feel that the asphalt plant here was "new equipment" as contemplated by the regulations. Here each time the plant is moved it must be "designed" for the new site and therefore its design was not "50% completed on April 15, 1967" as required by the regulations. In addition, equipment which has been used, then not used for a period, should be regarded as new equipment, if there is an attempt to use it again, for the reason that the layoff may cause some faults in the equipment itself. It is good practice for the Agency to have some control over this type of equipment, and we feel that this was the intent of the regulations.

We agree that in this particular case Reese did not commit a serious violation because the Agency admitted that the emissions from the plant when in operation were within the regulations and because Reese did not operate the plant until it had received a permit. But violations of the law cannot go unpunished, and we therefore will impose only a nominal penalty on Reese for its failure to apply for an installation permit before beginning the installation of its plant.

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

O R D E R

Based upon the stipulations, testimony and exhibits in the record, the Board hereby orders Reese to pay a penalty to the State of Illinois in the amount of $100 for the violations cited in the opinion.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order on this 17 day of November, 1971.

Christan Moffett
Acting Clerk