

ILLINOIS POLLUTION CONTROL BOARD

May 10, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-148
)
 PROCESSING AND BOOKS, INC., an)
 Illinois Corporation, NATIONAL-)
 MELLODY FARM FRESH EGG COMPANY,)
 an Illinois Corporation; and)
 AEROGLIDE CORPORATION, a North)
 Carolina Corporation qualified to)
 do business in Illinois,)
)
 Respondents.)

Richard Cosby, Assistant Attorney General for the EPA
Lewis Clarke, Sr. and Clayton Voegtle, Attorneys for Respondent
Processing and Books, Inc. and National-Mellody Farm
Fresh Egg Company

John G. Campbell and John W. McCullough, Attorneys for Respondent
Aeroglide Corporation

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

Respondents Processing and Books, Inc. and National-Mellody Farm Fresh Egg Company, owners and operators of a poultry farm near the village of Mundelein are charged with causing air pollution in violation of Section 9(a) of the Environmental Protection Act and with installing equipment affecting air quality without first obtaining a permit, in violation of Section 9(b) of the Act. The alleged air pollution consisted of odors from operation of: (1) a manure drier used to convert chicken manure into saleable fertilizer, (2) an incinerator used to dispose of chickens which die during the normal course of farm operation, (3) exhaust emissions from chicken houses, and (4) the spreading of chicken manure on farm acreage. It was alleged that the gaseous emissions settled into homes, other buildings and open areas located within 1/2 mile of the poultry farm.

Respondent Aeroglide is alleged to be the operator of the Aeroglide drier used to dehydrate the chicken manure.

All Respondents are charged with construction of new hen houses, incinerators and the Aeroglide drier and the installation

of an after burner on the Aeroglide drier without first obtaining an EPA permit.

The Complaint was filed on April 7, 1972 one week prior to our adoption of Air Pollution Control Regulations. We have previously held that violations allegedly occurring after the filing of a Complaint will not be considered. Therefore, the new Regulations cannot control our decision here.

Soon after the Complaint was filed Respondents Processing and Books, Inc. and National-Mellody filed a Motion for Dismissal which was supported by various exhibits and affidavits. In the Motion these Respondents stated that 16 chicken houses were constructed during the years 1965, 1968 and 1969; that building permits were granted by the Director of Building and Zoning of Lake County; that permits are required under Section 9(b) of the Act only when such facility is "designated by Board regulations" as "causing or contributing to air pollution or designed to prevent air pollution" and that no such Board designation had been made; that Section 3-2.120(d) of our predecessors Rules and Regulations Governing the Control of Air Pollution specifically exempted all "equipment used on farms or ranches for agricultural purposes" from permit requirements; that Section 3-3.331 of the Rules excepts from prosecution any air pollution violations resulting from "upset conditions, breakdown or cleaning of gas equipment or related operating equipment" and that such breakdown conditions have been reported annually by Respondents; that there has been no cause of action stated against Respondents; that the Illinois EPA made no test regarding emissions from Respondents' incinerators; and, that Respondents determined after numerous examinations that no gasses were emitted from the incinerators.

Exhibits attached to the Motion establish that construction of the chicken houses occurred in 1965, 1968 and 1969 and that construction of the Aeroglide manure drier was contracted in April 1970 with actual installation occurring later in the year.

Affidavits presented by the Respondents assert that malfunctions of the manure drier occurring in May and June, 1971 and in March, 1972 had resulted in shut-down of the drier on each occasion and were reported annually to the EPA.

We are also told that Respondent Processing and Books, Inc. has not accepted the drier and will not accept it until it operates satisfactorily and without objectionable discharges of gaseous emissions.

Respondents' employees stated in the affidavits that no odors extended more than 50' in extreme cases from the incinerators.

The EPA asked the Board to delay ruling on Respondent's Motion for Dismissal until after a hearing on the merits.

Because of the nature of many of the arguments made by Respondent we decided that it would be better to address these matters only after a full and complete hearing on the merits. The case therefore, proceeded to public hearing after all Respondents had filed Answers to the Complaint.

Respondent Aeroglide in its Answer contends that, although it sold components of the manure drier and provided technical assistance for the contractor, it was not an operator of the drier and that Aeroglide was not among the class of persons required to obtain a permit.

The Answer of Respondents Processing and Books and National-Mellody includes a contention that: to hold Respondents in violation of the statute when there exists no ascertainable standard as to what constitutes "air pollution" is a violation of Amendments V and XIV of the U. S. Constitution and Article 1, Section 2 of the Illinois Constitution. We deny this contention since air pollution is adequately defined in Section 3(b) of 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 to property, or to unreasonably interfere with the enjoyment of life or property". The requirement that Respondents not cause, threaten, or allow the discharge of contaminants which would cause air pollution is sufficiently informative to meet the constitutional test.

A series of five public hearings began with the submission of a Stipulation by the parties. In the Stipulation it was stated that Respondent National-Mellody is a wholly owned subsidiary of Processing and Books; that Respondents' chicken houses, incinerators, manure drier and waste disposal operations caused, threatened or allowed the discharge of gaseous emissions into the atmosphere; that between December 21, 1971 and May 5, 1972 the manure drier was run for various periods on each of about 36 days and odor was noticed in close proximity to the drier on or about 6 of those days due to upset conditions causing the drier to be shut down for adjustments and repairs; that subsequent to May 5, 1972 a basic structural change was made to the manure drier whereby a heat-exchanger device located after the after burner was replaced by a stack which allows a retention time of at least 0.6 seconds at a temperature of at least 1400° F. with a result that on October 31, 1972, two Agency investigators detected no odors emanating from the drier with the exception of a very slight scent detectable only for 5 to 10 seconds at a distance of 250 - 300 yards west-northwest of the drier; and, that Respondents had not obtained permits for construction of the hen houses, incinerators and the

manure drier.

The facilities in question are located on Hawthorne Melody Farms about 1 mile south and west of the village of Libertyville and about 1/4 mile east of Mundelein. The west border of the farm is Butterfield Road. The present owners acquired the farm in 1932. The farm was used for the raising of chickens, hogs, horses, turkeys, white fallow deer, dairy cattle, sheep and pheasants (a cross between pheasants and chickens). Until 1965 the chicken population on the farm averaged 15,000-18,000 chickens. An expansion program began in 1965 with the building of two additional chicken houses and was followed by the construction of two more chicken houses in 1966 and twelve chicken houses in 1969. Presently housed at the site are about 300,000 chickens, 35 horses, 500 hogs, and 50-60 white fallow deer. Some 500 turkeys were raised and sold in 1972. Approximately 160,000 eggs are produced and packaged daily.

In addition to the 16 chicken houses the site has one building which contains an egg processing room, one feed mill, two incinerators to dispose of dead chickens (about 175 chickens per day) and one Aeroglide drier for dehydrating animal manure. Of the total 1800 acres comprising the farm about 1,068 acres are used to grow corn for feed.

From the evidence we believe that the facilities in question were being used for "agricultural purposes" and that under the Regulations applicable to this case no permit was required for installation of equipment affecting air quality. Our greatest concern is whether the incinerators should be so classified but we believe that their intimate connection with the hen house operation would in this particular case make that exception applicable.

The Agency contends that this is a commercial operation since profit is a primary motive. We note, however, that such is the motive of any agricultural operation and regardless of the semantics involved, we believe that the equipment presently at the site was exempt from permit requirements under Section 3-3.120(d) of the Rules. We find that the failure to obtain an installation or operating permit was not a violation of the Statute and the Regulations.

We give fair warning, however, that this decision may have limited effect as precedent. On April 14, 1972, one week after the failing of the Complaint, this Board adopted a new and comprehensive set of Air Pollution Control Regulations. Rule 103(a)(1) of these Regulations states: "Prohibition. No person shall cause

or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in paragraph (i) of this Rule 103". Paragraph (i) of Rule 103 does not contain any exemption for equipment used for "agricultural purposes".

The vast majority of testimony received during the hearings was directed toward the allegation that Respondents had caused air pollution within the meaning of Section 9(a) by causing an odor nuisance in the community. Mrs. Jean Kemnitz testified that she has driven by the poultry farm about 5 times a week for the last 3 years. She stated that under certain wind conditions, she experiences a "terrible odor" like "chicken manure" that is sometimes "so bad I have to hold my nose; I can't even breathe" (11/13/72 R. 19-20) (Reference is to hearing date and page of record) Mrs. Kemnitz moved 15 years ago to her present residence 1/2 mile south of the poultry farm. She feels that the odor is worse now than it used to be and began reaching her residence about 2 or 3 years ago (11/13/72 R. 21). She stated that the odor is not as strong at her home as that experienced in driving by the farm and is mostly an annoyance at her home. Although she did not keep any records, Mrs. Kemnitz estimated experiencing the odor about 10 times in 1972. On cross examination, Mrs. Kemnitz testified that she experienced another odor mixed in with the chicken manure odor, which she could not describe but thought it may have been connected to the chicken burning operation (11/13/72 R. 28).

Witness Frank Cooper who resides and operates a manufacturing firm about 1/4 mile south of the poultry farm, testified that about 1 and 1/2 years ago a fog like condition developed with a stench so bad that "you could hardly get your breath". At that time he visited the farm to see if he could get the smell stopped (11/13/72 R. 35-36). He was unable to talk to anyone in authority at the farm and he then called the Hawthorne Mellody office and was informed that "something could be done to stop the smell" (11/13/72 R. 36). Mr. Cooper identified the source of the fog like condition as the farm and more particularly as a new building "south and east of the chicken houses" (11/13/72 R. 58). Mr. Cooper also stated he noticed the same odor for about 3 years, was bothered by the odor at night (11/13/72 R. 43), was forced to cease outdoor entertaining because of the odor (11/13/72 R. 44) and received complaints from his employees who were forced to eat lunch inside (11/13/72 R. 47) because the odor was so strong (11/13/72 R. 49).

Other witnesses gave the following accounts:

The odor caused instant nausea when she stepped outside her home (11/13/72 R. 77).

You step outside your home and the air is just permeated with this odor. It is really a putrid odor. I would say it is probably chicken manure, or if they burned chickens, it might be that, and I really can't imagine what it is, but it is bad (11/13/72 R. 82).

I smelled the chickens in the old chicken coops that they used to have out there before this, but after they put up that incinerator, or whatever they call that, then it started getting this here real strong bad odor, much worse than we had before (11/13/72 R. 96).

The odor was bad. It smelled like burning chicken feathers, along with things that come from having 100,000 chickens at a site (11/13/72 R. 137).

...I could detect the odor even in town, at my home, which is about a mile and a half north... The odors do affect people here in town when the wind is from the southwest (11/13/72 R. 138).

Oh, yes, I would say that it has been over the course of the past 12 years that I've been here that the odor has been very strong or that the odor has been there often (11/13/72 R. 143).

I think the main effect was you would walk outside and smell this odor. You didn't want to stay out there at all. The first thing you do is run back into the house, and it made it rather difficult during the summer because you couldn't go out and enjoy it at all (12/5/72 R. 11).

I walked outside and I took one breath of air, and I felt rather sick, rather nauseous (12/5/72 R. 12).

Believe odor was worse during 1971 than 1972. Noticed odor three or four times a week during 1971 (12/5/72 R. 17).

To me it is a combination of chicken manure and rotten chicken and chicken feathers (12/5/72 R. 39).

Noticed odor in Hawthorne School parking lot (12/5/72 R. 41)

To me it smelled like burning, flesh burning, something like that, hair burning (12/5/72 R. 107).

Well, so far, we've never been exposed to it long enough, but me personally, I began to get nauseated, so we rolled up the windows in the car (12/5/72 R. 109).

It's different. It smells like something burning (12/5/72 R. 110).

Yes, very distinct odor, so bad you sometimes can't even sit outside (12/5/72 R. 167).

A. Well, we get an odor pretty often. It is a terrible odor.

Q. Can you describe the odor for me?

A. I know it's burning chicken and feathers. It smells like it. (12/5/72 R. 177)

It covers the whole place. You have to keep the windows shut unless..it gets right into the house. I can't have a cookout outside (12/5/72 R. 178).

In dead of night, we get that odor. It comes through and wakes me up out of bed. I have to get up and close the windows (12/5/72 R. 192).

Testimony obtained during the other hearing dates from persons residing near the poultry farm added more statements of this type to the record.

Respondents witnesses testified that they noticed no odors at all or noticed some odors but not of sufficient strength that it couldn't be taken in stride (1/16/73 R. 610), put out of mind and forgotten (12/6/72 R. 216) or be distinguished from exhaust odors from buses (1/16/73 R. 600).

Dr. Howard C. Zindel, professor and Chairman of the Poultry Science Department, College of Agriculture, Michigan State University, inspected the poultry farm as a consultant on November 15, 1972 and testified as an expert witness on behalf of Respondents Processing and Books and National-Mellody. Dr. Zindel provided a description of the chicken houses which involved a summary of the air exhaust system currently in use. He estimated that the vent fans in the chicken houses probably exhaust 7 cubic feet of air per bird per minute.

During his inspection, Dr. Zindel stood outside one of the chicken houses in the path of a fan exhaust and did not notice any "poultry manure or poultry odor" (12/6/72 R. 252). He then proceeded into the chicken house where he noticed cleaning in progress and again observed no odor. The cleaning he observed was described as scraping of manure with lathes to pull it down into the center of the house. When asked if fresh chicken manure had a substantial odor, Dr. Zindel replied "strange that it may seem, there is no odor for the first seven days when manure is expelled from the bird. The odor begins after the bacterial action, and also chemical action starts. It is definitely then the maximum". (12/6/72 R. 252) His investigation further revealed a lack of disagreeable odors in the egg processing room and no detectable odors in the incinerator

buildings. He later said the incinerators had a "fragrance" not objectionable to him (12/6/72 R. 321).

Dr. Zindel further stated that agitation of the manure pit located in each chicken house in order to facilitate removal of the liquid manure would definitely be a source of odor (12/6/72 R. 253); that the dehydration unit at the farm was one of many methods being used for waste disposal but that the most typical method used in agriculture is putting it on farmland (12/6/72 R. 260-261); and that he did detect an odor in the manure drier building but only when he picked up some of the dried material which had been stored for sometime in one of the sheds (12/6/72 R. 273). He also detected odors, described as "a putrid sulfur dioxide odor", at the holding pit for the manure drier while the manure tank was being unloaded into the pit (12/6/72 R. 302, 303 and 304). He found the odors personally obnoxious.

Dr. Zindel testified that the incinerators "appear to be very efficient, based on the ash that I looked at and based on the contents being heated or burned in the interior of the unit" (12/6/72 R. 272). However, on cross examination, Dr. Zindel did not know if the incinerators were multichambered, did not know the operating temperature of the incinerator after-burners, did not have an opinion as to what would happen if the after-burner was operated at a lower temperature than that suggested by the manufacturer (12/6/72 R. 312), did not know what temperature was required in the after-burners to "get the job done" (12/6/72 R. 326) and did not have knowledge or an opinion of the required after-burner retention time (12/6/72 R. 327).

The evidence in this case indicates that the primary sources of odors on the farm are operation of the manure drier and the incinerators. Some odors also come from the chicken houses and the spreading of the manure on the land. Although Respondents witnesses testified that odors came from the spreading of sewage wastes on the farm from a nearby sewage treatment plant, we do not believe that the odors described by the majority of the witnesses came from this source. The weight of evidence establishes that odors caused by Respondents were a nuisance in the community and unreasonably interfered with the enjoyment of life or property.

We further believe that not all of these odors were the result of upset conditions, breakdown or the shut down of equipment for cleaning purposes. Milton Brod testified that during 1971 he noticed the odors 3 or 4 times a week (12/5/72 R. 17). Lawrence Byrne, President of National-Mellody Farm Fresh Egg Company, stated that the established procedure was to light both burners in the

incinerator at least 15 or 20 minutes before putting the dead chickens into the incinerator (12/20/72 R. 431). However, his manager, Albert Wetzel testified that chickens are sometimes incinerated before the temperature has been brought up: "well, we put in, say, for instance, starting in the morning at--by 7:30 or so, we probably put in 20, 25 chickens, and the burners then are lit...." (R. 505) He said some of the boys put the chickens in first and then start the burners (R. 508). Odors thereby caused are the result not of equipment malfunction but of employee failure to follow the approved procedures.

From the evidence we are compelled to find that Respondents Processing and Books, Inc. an Illinois corporation, and its wholly owned subsidiary National-Melody Farm Fresh Egg Company, an Illinois corporation, have violated the provisions of Section 9(a) Environmental Protection Act.

Aeroglide Corporation sold the drier equipment and furnished technical advice regarding its operation. However, there is no testimony indicating that Aeroglide exerted any control over the operation of the equipment or of the business which caused the odors to be emitted. We find that a case has not been proved against Aeroglide and will dismiss the action as to that Respondent.

Some of Respondent's neighbors had lived in the area for almost 20 years. Some of them had their own farm animals and therefore had to dispose of manure. Although they tolerated the past odors emanating from a much smaller operation they found they could no longer enjoy their homes and property because of the chicken manure odor and the even more permeating odor of burning chickens and feathers. We believe that an appropriate monetary penalty for the infliction of such a nuisance is \$3000. The penalty might be somewhat higher except for the fact that Respondent has continued to make efforts to solve the odor problem. Installation of a stack in May 1972 providing increased retention time for burning of gasses at a high temperature should reduce odor potential. That installation, along with improved operator procedure, should result in substantial nuisance abatement.

We further note that under Rule 1.03(b)(2) National-Melody Farm Fresh Egg Company must obtain an operating permit by June 1, 1973 for its existing emission sources and air pollution control equipment and that permits to operate the incinerators were to be obtained by April 1, 1973. These procedures carry the potential for further improvement in Respondent's operating procedures if steps taken to date prove inadequate.

ORDER

It is the order of this Board that:

1. Aeroglide Corporation is adjudged not guilty of the charges brought against it.
2. Respondents Processing and Books, Inc. and National-Mellody Farm Fresh Egg Company, an Illinois corporation, are adjudged not guilty of the charges brought against them for violating Section 9(b) Environmental Protection Act.
3. Respondents Processing and Books, Inc. and National-Mellody Farm Fresh Egg Company, an Illinois corporation, are adjudged guilty of violating Section 9(a) Environmental Protection Act as charged and said Respondents shall jointly pay to the State of Illinois by June 15, 1973 the sum of \$3000 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.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 10th day of May, 1973 by a vote of 4 to 0.


Christan L. Moffett