

ILLINOIS POLLUTION CONTROL BOARD
March 29, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
)
 v.) PCB 72-49
)
)
 BENJAMIN HARRIS and COMPANY,)
 an Illinois Corporation)
)

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

This is an enforcement action wherein the Agency alleges that the respondent has been operating its plant in violation of Section 9(a) of the Act and also in violation of Rules 2-2.54 and 3-3.111 of the old Illinois Air Pollution Regulations approved in 1963 and amended in August, 1969. Hearing were held on September 7, September 8, September 12, September 21, October 21, October 24, and October 27, 1972.

The respondent is the owner and operator of a brass and bronze foundry located at Eleventh and State Streets in the City of Chicago Heights. The foundry is equipped with one four-ton per hour cupola, four brass and bronze reverberatory furnaces each with a holding capacity of 100,000 pounds and a stated process weight of 5,000 pounds per hour, one ten-ton rotary furnace having a stated process weight of 2,000 pounds per hour, and two one-ton crucibles having a stated process weight of 900 pounds per hour.

Section 9(a) of the Act provides in essence that no person shall discharge 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 Agency's private citizen witnesses were able to distinguish respondent's emissions from other industrial emissions in the area. (Tr. 9/7/72 pp. 80, 129-143, 158-160, 222; Tr. 9/8/72 pp 11-319, 535; Tr. 9/12/72 pp. 523-524) They were in substantial agreement regarding the range of colors, odors, tastes and effects of emissions from respondent's facility. The witnesses testified to a multi-colored smoke consisting of bluish, yellow, whitish, and green shades. The common odor reported was a noxious metallic odor. (Tr. 9/7/72 pp 27-32, 242, 244; Tr. 9/8/72 pp. 322, 366) The citizen witnesses also testified to varying degrees of discomfort as a result of the emissions. They included chest pains, running eyes, obscured vision, difficulty in breathing, and throat and nostril irritation. (Tr. 9/7/ pp 28-36, 55-57, 104-108, 226, 229) One witness testified that the emissions were sometimes

dense enough to obscure the other side of the street thus creating a driving hazard. (Tr. 9/7/72 pp 52-54) Another testified that he has had to change his parking place at work in order to avoid exposure to the emissions. (Tr. 9/7/72 p. 104) One witness, a supervisor at another company nearby, testified that his workers complained about respondent's emissions and that he had to relieve one asthmatic on his shift who is particularly sensitive to those emissions. He also testified that on one occasion the work of his entire shift at the plant had to be interrupted because the respondent's emissions were so severe. (Tr. 9/7/72 pp. 110-124) One witness testified that the emissions were so discomforting to inhale that he tried not to breathe when exposed to them on the road. (Tr. 9/12/72 p. 501) There was also testimony that the respondent created a driving hazard by obscuring the heavily travelled road adjacent to respondent's plant. (Tr 9/12/72 pp. 489-491) The observations of emissions described in the testimony of the citizen witnesses span a period beginning prior to the earliest date alleged in the complaint and continue to at least the summer of 1972.

According to the Agency the estimated emissions from respondent's reverberatory furnaces for the months of April, 1971 thru February, 1972 were 523,796 pounds of dust. They also show a high zinc and lead content of the reverberatory furnace offgases.

We find the respondent to be in violation of Section 9(a) of the Act. According to the evidence the emissions from respondent's plant were injurious to health and did unreasonably interfere with the enjoyment of life and property.

The Agency has also alleged a violation of Rule 2-2.54 of the Air Regulations approved in 1963 and amended in August, 1969 as applied to respondent's cupola furnace. According to the Agency's testimony based upon engineering calculations, the particulate matter emissions prior to 1972 did exceed the allowable maximum limits under Table II Chapter II of the Regulations. There are mitigating circumstances which will be discussed below.

The Agency has also alleged a violation of Rule 3-3.111 as applied to respondent's other furnaces. Again, according to the Agency's testimony based upon engineering calculations the particulate emissions for those furnaces were in excess of the allowable maximum limits under Table I Chapter III of the Regulations.

The respondent introduced much evidence in mitigation of the violations. In regard to the reverberatory furnaces, it appears that they have been operated in compliance since March, 1972 when the baghouse system became operational. The baghouse was purchased and was contracted for erection in September, 1969. After

the baghouse was ordered, a strike at the baghouse manufacturer's plant occurred for several months. From April, 1970 to July, 1970 the respondent's plant itself was struck by the Teamster's Union whose pickets prevented any preliminary foundation work from being done on the premises. From August, 1970 thru February, 1971 respondent's plant was struck by the Steelworkers' Union who shut down the operation of the entire plant and allowed no workmen in to erect the baghouse. When the baghouse was finally uncrated after the strike was over its master control panel was found to be ruined. The manufacturer did not complete its repairs on the panel until December, 1971. A further delay was caused after that as a result of a defect in a water pump which was not discovered until the control panel was installed and the entire operation tested. It further appears that the respondent was in regular communication with the Agency advising it of the status of its progress and the nature of its problems. Thus it appears that because of the exceptional amount of time lost the baghouse would have been operational by July, 1970 which would have been almost a year prior to the earliest dates alleged in the complaint.

The evidence also indicates that the cupola furnace was not operated at all during 1972 and in fact was voluntarily abated prior to the filing of this case. The respondent does not intend to use the cupola furnace until such time as appropriate permits have been obtained from the Agency.

The rotary furnace was discontinued voluntarily in February, 1972 and respondent also does not intend to operate this until permits are obtained from the Agency. The respondent has been granted an Agency construction permit to control the rotary furnace by connecting it to the baghouse. The installation of these controls will cost around \$25,000. Furthermore, the voluntary shutdown of these furnaces has already resulted in a substantial financial loss to the company of over \$200,000. The respondent introduced further evidence to show that it has already spent around \$500,000 for existing pollution control equipment.

We do find that the violations did actually occur as a result of respondent's operations. We also find, however, that the respondent has displayed a reasonable degree of diligence and good faith in attempting to abate its pollution problems. They have already spent considerable amounts of money and plan to spend even more on pollution control equipment. Their voluntary shutdown of certain furnaces in the interest of abatement is commendable. In view of the mitigation effort and circumstances we will assess a penalty in the amount of \$7,500 which is less than what we would assess were it not for such mitigation. We do expect, however, that the respondent will exert the utmost good faith and diligence in obtaining the necessary permits from the Agency and completing its program.

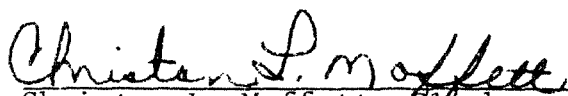
Mr. Lawton took no part in these proceedings.

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

ORDER

1. The respondent shall cease and desist from the nuisance and particulate violations found in this opinion.
2. The respondent shall pay to the State of Illinois by April 30, 1973 the sum of \$2,500 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 Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24th day of March, 1973 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board