

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-81
)
TEE-PAK, INC.)
)
 Respondent.)

Larry R. Eaton, Assistant Attorney General for the EPA
John B. Jenkins, Attorney for Respondent

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

The Environmental Protection Agency filed its Complaint against Respondent Tee-Pak, Inc. alleging that the Company had allowed the discharge of hydrogen sulfide and foul and obnoxious odors into the environment in violation of Section 9(a) of the Environmental Protection Act. An interim settlement was approved by the Board on November 8, 1972. On October 31, 1974 the Board rejected a Proposal for Final Settlement which had been submitted by the Agency and Tee-Pak.

The history of this litigation and details of the Respondent's process and pollution problem are discussed at length in the prior Opinions and will be summarized here. Tee-Pak is a manufacturer of cellulose casings which are used in the meat packing business. During the manufacturing process hydrogen sulfide gas (H₂S) is released and the odor from this gas has resulted in a number of citizen complaints. In its control program Tee-Pak has installed five scrubbers for the reduction of H₂S emissions. A long and expensive testing program was undertaken to determine the need for a sixth scrubber. Tee-Pak had agreed to install a sixth scrubber but nevertheless we rejected final settlement on October 31, 1974 because the settlement appeared to give Tee-Pak a permanent defense to Section 9(a) prosecutions.

The parties have now presented a Stipulation and Joint Motion in which they request that the Complaint be dismissed without prejudice and that this proceeding be terminated with leave to reinstitute upon failure of Tee-Pak to comply with any condition of the Stipulation. The Stipulation and Considerations for it are set out in full below.

STIPULATION

"The parties hereby stipulate, agree and represent as follows:

1. That the 'JOINT REPORT AND PROPOSAL FOR FINAL SETTLEMENT' filed herein by the parties on January 29, 1974, and all joint responses, statements of clarification, and all evidence and supporting materials subsequently submitted to this Board as relevant or related thereto, shall be deemed to have no further effect in this cause, and shall be treated hereafter as if withdrawn.

2. That Tee-Pak shall order, construct, install and place into operation a sixth scrubber, namely a Ceilcote Model HRP 300 Crossflow Packed Scrubber, having a capacity of 30,000 CFM, or equivalent, to be applied primarily as a device to control the emissions of hydrogen sulfide emanating from the "surging emission source" previously referred to in these proceedings.

3. That on January 2, 1975, Tee-Pak submitted its application for a construction permit to be issued by the EPA for the construction and installation of the above-described scrubber; that said permit application, now having been designated as Application No. C 5 01 001, has been received by the EPA on January 3, 1975; and that said permit application has been, and will be, supplemented and modified in such manner as may reasonably be required to allow issuance of the requested permit.

4. That Tee-Pak shall submit to the EPA all additional necessary applications for permits required to construct and operate the additional control device referred to above.

5. That, based upon predictions by Tee-Pak's engineering staff and reliable information obtained from the suppliers of such equipment, the control device referred to above shall be constructed and be ready to operate prior to December 31, 1975.

6. That if the motion which follows, in substantially the form exhibited and attached hereto, shall not be granted by the Pollution Control Board, then this Stipulation, and the agreements and commitments of the parties set forth herein, shall be deemed of no effect and neither of the parties shall be prejudiced thereby.

CONSIDERATIONS

The parties further represent that the following considerations, matters and problems now pending before the Board underlie and motivate their agreements herein, and the motion which follows:

7. The Pollution Control Board, by its Order entered on October 31, 1974, rejected the Joint Report and Proposal for Final Settlement submitted by the parties herein; and failure of the parties to submit a modified, or different, proposal for settlement to the Board will result in this matter being assigned to a hearing officer for further time-consuming proceedings.

8. That in the event that this matter were assigned for further proceedings before a hearing officer, very substantial and probably unwarranted, expense would be incurred by the parties and this Board, and substantial time would be consumed before a final order could be entered by the Board.

9. That Tee-Pak desires to install and operate the above-described control device as insurance and protection against possible adverse public reaction to its admissions and resulting potential interruption of its production process.

10. That Tee-Pak cannot incur the risk of installing or applying additional control to its emissions until a final order is entered by this Board in these proceedings; and therefore, installation of the control device referred to above, and operation of the company's production process in the most acceptable manner and in the interest of the public, can be accomplished, and at the very earliest date, by termination of these proceedings and immediate installation of such control equipment.

11. Installation of the control device described above and dismissal of these proceedings do not require the establishment of "mini standards", allowance of variances during construction, granting of defenses or prima facie defenses to future prosecutions under 9A of the Act, or other matters which troubled this Board as appears in the preamble to its Order dated October 31, 1974.

12. By this Motion, as in the Stipulation previously submitted to the Board, referred to in Paragraph 1 hereof, the EPA neither seeks nor supports a finding of any violation in these proceedings, nor the assessment of any penalty; and

since it appears from the preamble to the Board's Order entered on October 31, 1974 that the Board agreed with the recommendation that no monetary penalty be imposed upon Tee-Pak, these proceedings should be terminated in order to permit construction of the control device referred to above at the earliest possible date, and without the necessity of the further delay and expense which will be attendant to continuation of these proceedings before a hearing officer.

13. In light of the materials previously submitted and considered, the only substantive relief that anyone is seeking is the addition of a sixth scrubber, and therefore, granting of the Motion which follows brings about that result as much as a year earlier than if these proceedings were to continue."

The Board finds the Stipulation and its terms acceptable and will enter the suggested Order of Dismissal. The agreement clearly calls for progress to be made by Tee-Pak in reducing its odorous emissions, and that progress will be accelerated by an early disposition of this case. By the dismissal of this case the citizens of the community are not deprived of their right to present claims under Section 9(a) of the Environmental Protection Act. From the standpoint of the public the agreement appears beneficial, providing as it does for a reduction of odor without any waiver of the legal rights of the public.

We have previously observed that Tee-Pak has exhibited good faith and cooperative effort in performing its commitments. We believe that the current agreement will be for the benefit of the entire community.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

This matter having come on for hearing and consideration this 23rd day of January, 1975 upon the Stipulation, Considerations and Joint Motion of the parties filed herein on the 16th day of January, 1975 for dismissal of the Complaint pending herein and termination of the proceedings, and the Board having considered the same and now being sufficiently advised.

Now, therefore, it is ordered that the Complaint herein be, and the same hereby is, dismissed without prejudice in accordance with the terms of said Stipulation, Considerations and Joint Motion, and that this proceeding be hereby terminated with leave to reinstitute upon failure to comply with any term or condition of said Stipulation.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 23RD day of January, 1975 by a vote of 4 to 0.

Christan L. Moffett