

ILLINOIS POLLUTION CONTROL BOARD  
June 16, 1988

RUBY and EDWARD HARGROVE, and )  
JOYCE and EUGENE FOLTZ, )  
 )  
Complainants, )  
 )  
v. ) PCB 87-19  
 )  
TAMMSCO, INC., ALEXANDER )  
COUNTY COMMISSIONERS, DONALD )  
JORDAN TRUCKING COMPANY, )  
and MARQUETTE GRAVEL COMPANY, )  
 )  
Respondents. )

MR. JAMES W. SANDERS AND MS. LEE ELLEN STARKWEATHER, JAMES W. SANDERS AND ASSOCIATES, APPEARED ON BEHALF OF COMPLAINANTS;

MR. GEORGE J. KALAIPOS, JR., TAMMSCO, INC., APPEARED ON BEHALF OF RESPONDENT TAMMSCO, INC.;

MR. MARK H. CLARKE, ALEXANDER COUNTY STATE'S ATTORNEY APPEARED ON BEHALF OF RESPONDENT ALEXANDER COUNTY COMMISSIONERS.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon complaints filed by Ruby and Edward Hargrove, Joyce and Eugene Foltz, and John Barton on February 23, 1987 against Tammsco, Inc. (Tammsco), Alexander County Commissioners (County), Donald Jordan Trucking Company (Jordan), and Marquette Gravel Company (Marquette). Hearing was held October 14, 1987, at the Village Hall in Tamms, Illinois.

Present at hearing were Complainants Ruby and Edward Hargrove and Joyce and Eugene Foltz. Complainant John Barton did not attend hearing. On January 20, 1988, Respondent Tammsco filed a motion pursuant to 35 Ill. Adm. Code 103.220 requesting that default enter against John Barton as a result of his failure to attend hearing. On February 25, 1988, the Board granted Tammsco's motion for default against John Barton.

The remaining Complainants, the Hargroves and the Foltzs, are residents of Alexander County in Southern Illinois, near the Village of Tamms. They live one-quarter mile apart on a gravel road known as the McDaniel's School Road. Respondent Tammsco operates a fifty year old silica processing plant employing 35 people in Tamms, Illinois. Respondent's plant receives the silica from its mine located near the end of McDaniel's School

Road by means of trucks which traverse McDaniel's School Road. The Complainants allege that as the trucks travel past their homes, the trucks cause dust to be emitted into the air, thereby causing a violation of 35 Ill. Adm. Code 201.141.

For the reasons described below, the Board finds that Complainants have failed to make the requisite showing that Respondents have violated 35 Ill. Adm. Code 201.141.

### Factual Background

The relevant uncontested facts are as follows. Alexander County is a small, rural county located at the most southern tip of the State. Alexander County has a low tax base. Within the County's boundaries lie approximately 200 miles of gravel roads which are (a) comprised of the same types of materials as gravel roads in neighboring counties and (b) maintained in compliance with the standards set by the Department of Transportation of the State of Illinois. Alexander County does not generate sufficient revenue to pave (i.e., "oil and chip", blacktop) each of the 200 miles of gravel roads within its boundaries. (R. at 39).<sup>1</sup>

The Complainants claim to have first noticed a dust problem in the summer of 1986. They contend that during the spring thaw of 1986 the gravel road became impossible for automobiles and trucks to travel and that it needed repair. They further contend that Tammsco, having first received the authority to do so from the County of Alexander, proceeded to repair the road. As part of its repair, Tammsco dumped two loads of "white flour like silica dust" on the road (Comp. Br. at 2). After that, Tammsco allegedly dumped several loads of larger pure white silica rock from the silica mine. According to Complainants, the rocks were so large that passenger cars could not travel the road, and that as a result, the County put a finer gravel on top of the large silica rock.

The Complainants assert that when Tammsco dumped the "silica" in the road, the silica was wet. Later in the Spring, the silica dried and the dust problem began. The Complainants described the dust as being a "snow white and flour white material" that was emitted whenever Respondent's trucks drove past. Mr. Hargrove testified that the dust damaged his property, i.e. killed fruit trees, ruined the siding of his recreational vehicle, damaged flowers, rugs, furniture, refrigerator, and an air conditioner, and damaged his health. Mr. Hargrove testified

---

<sup>1</sup> Citations to the record are as follows: 1) references to the hearing transcript are "R. at \_\_\_\_"; 2) references to Complainants Brief are "Comp. Br. at \_\_\_\_"; 3) references to Tammsco's Brief are "Tammsco Br. at \_\_\_\_"; and 4) references to County Brief are "County Br. at \_\_\_\_".

that before Respondents dumped the material in the road he had no problem breathing but that after the material was dumped, he noticed breathing problems. Mr. Hargrove further testified that he went to a doctor, who performed certain tests. The Board notes that the results of these tests have not been made part of the record.

Mrs. Foltz testified that the dust has damaged her property as well. According to her testimony, Mrs. Foltz has for the past few years had a vegetable business upon which she realizes an income. Mrs. Foltz characterized the summers of 1985 and 1986 as being "very good" years (apparently meaning net incomes of approximately \$6,000.00 per year). However, the summer of 1987 she characterized as a "bad" year, with income about one-half that of previous years. Mrs. Foltz attributed the cause of the bad year to the dust that is the subject of this action. Mrs. Foltz's statement regarding the "cause" of the dust, i.e. Respondent's dumping material in the road during repairs, is consistent with the testimony of Mr. Hargrove. However, Mrs. Foltz is less certain as to the type of material that was dumped. She claims that the dust almost killed the vegetable plants by beating holes into the leaves, and by covering the leaves with dust. Mrs. Foltz also claims that the dust ruined her carpets, and caused damage to her air conditioner and television speakers.

Respondent Tammsco's version of the facts, although similar to Complainants, presents certain differences from that set forth above. Tammsco admits that it owns and operates a silica processing plant in Tamms, Illinois and a mine located near the end of McDaniel's School Road. Tammsco transports its silica from the mine to the plant via two trucks which travel over McDaniel's School Road. Tammsco contends that this road has been used to haul these materials for approximately the past 20 years. Tammsco states that during a typical day, Tammsco trucks make seven round trips (from the mine to the plant to the mine) between the hours of 6:00 a.m. to 6:00 p.m., and that such activity constitutes approximately 14% of all traffic on the road during those hours. Tammsco further states that while there is an alternate route that could be taken, such route is approximately 5 miles longer than the present route (twice as long) over similarly unpaved roads and would result in doubling of the transportation time, road dust generation, as well as substantially increasing plant operation costs and product time.

Tammsco admits to undertaking some repairs of the McDaniel's School Road. However, Tammsco testified and presented certain evidence that such repairs occurred in the Spring of 1985, and not 1986. Tammsco stated that as a result of the winter thaw, the McDaniel's School Road became undermined, and that its trucks could not traverse the road. Tammsco stated that it requested the County to repair the road. Tammsco states that in response

to its request the County indicated that in view of all the overwhelming road problems throughout the County (also caused by the spring thaw), the County would be unable to repair the road for quite some time. According to Tammsco, the County did, however, state that Tammsco could at its own expense repair the road.

Thereafter, Tammsco undertook to repair McDaniel's School Road. At hearing, Tammsco presented purchase receipts dated February 26, 1985 for approximately 110 tons of chert from the Mark Graff Quarry and March 2-4 for approximately 200 tons of limestone material from the Columbia Quarry to indicate what type of material it placed in the road. (Respondent's Ex. No. 1 and R. 158-159). Tammsco states that these two quarries were the same quarries used by Alexander County both during and prior to 1985 for road building material. Tammsco presented testimony that both chert, a form of silica, and limestone are commonly used road building materials in the County. Tammsco further stated that no material, i.e., silica, from its mine was used in the road repair project. To support this claim, Tammsco stated that the silica it mines is of greater value to it as processed product rather than as road material.

Tammsco further stated that after it placed these materials on the road Complainants complained to the County that the road was still too bumpy. Following these complaints, the County came out and graded the road, but its efforts still did not satisfactorily resolve the problem. Thereafter, the County placed one and one-half to two inches of limestone over the entire surface of the road. Tammsco states that it was at this time that the complaints about the dust began. Tammsco stated that after it learned of the dust complaints, it commenced a policy of covering its trucks with tarps to prevent the mined material (silica) from falling out of the trucks. Tammsco also stated that it instituted a speed reduction policy limiting its trucks to a speed of 20 mile per hour (m.p.h.) even though McDaniel's School Road has a posted speed limit of 30 m.p.h.

Finally, as regards the dust composition, Tammsco presented an expert witness, a geologist who is employed by the Unimin Corporation, Tammsco's corporate parent. Tammsco's expert witness, Mr. William Shalter, testified that it was his expert opinion that the physical makeup of the McDaniel's School Road was (a) typical of the geology of other unpaved roads in Alexander County, (b) consistent with the geology of the Mark Graff and Columbia quarries, and (c) inconsistent with the geology of the Tammsco mine. Mr. Shalter also testified that he conducted certain acid (vinegar) tests and that the results of the tests indicated that the dust on the foliage near the road's edge was predominantly limestone.

The County presented a position similar to Tammsco's. However, the County noted that when Complainants contacted the County about the dust problem, the Complainants demanded that the quarter-mile section of McDaniel's School Road near their homes be paved. The County informed the Complainants that insufficient funds existed for the project and that it was the County's policy to pay a portion of the paving expense if the local resident(s) pay a portion. The County stated, and Mrs. Hargrove's testimony supported, that the Complainants rejected this offer.

### Argument

Complainant's Complaint alleges that Respondents have violated a Board air pollution regulation, specifically 35 Ill. Adm. Code 201.141, which states:

No person shall cause or threaten or allow the discharge or emission of any contaminant<sup>2</sup> into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

Section 31(c) of the Act states in pertinent part that:

"in hearings before the Board under this title the burden shall be on the ... complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof."

Thus, Complainants clearly bear the burden of proving that Respondents have caused the discharge or emission of a contaminant into the environment so as to cause air pollution.

Complainants argue first that there is "no doubt that the dust which plagues [them], regardless of whether it is silica dust or limestone, is a contaminant." Comp. Br. at 5. The County argues that Complainants "completely failed to show that the chert and limestone materials used by the County on McDaniels School Road are 'contaminants'." County Br. at 6.

---

<sup>2</sup> "Contaminant" is defined by the Act as "any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source."

On this point, the Board agrees with Complainants -- the dust complained of, whether it be chert, limestone, or silica, is obviously "solid" matter from some source. It therefore falls within the statutory definition of "contaminant" set forth in Section 3.06 of the Act. Thus, the dust in issue is a contaminant. Having stated that, however, the Board is not persuaded that the material dumped in the road was "silica". In fact, the evidence presented by Respondent Tammsco, indicates that the fill material was chert and limestone, both common road surface materials. Moreover, the record does not indicate what difference it would make even if it were silica.

The next question is whether the dust that is caused by vehicles traveling over the road falls within the prohibition relating to the "discharge or emission of any contaminant into the environment ... so as ... to cause or tend to cause air pollution" set forth in 35 Ill. Adm. Code 201.141. "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 to property, or to unreasonably interfere with the enjoyment of life or property.

The Board is not persuaded that the record supports a determination that the road dust is "injurious to human, plant, or animal life, to health, or to property." Allegations alone are not enough: evidence to support such a conclusion has not been submitted into the record. However, the Board does believe that Complainants have demonstrated interference with the enjoyment of life or property. The question then becomes whether or not the interference is unreasonable. [T]he unreasonableness of an alleged air-pollution interference must be determined by the Board with reference to the Section 33(c) criteria." Incinerator Inc. v. PCB, 59 Ill. 2d 290, 319 N.E.2d 794, 797 (1974). Section 33(c) of the Act requires that the Board take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any economic benefits accrued by a noncomplying pollution source because of its delay in compliance with pollution control requirements.

With respect to factor (1), Complainants argue that the testimony clearly indicates that the injury is severe and substantially interferes with the protection of Complainants' health, general welfare, and property as alleged in the facts above. Respondents argue that no other residents living along the road have either filed a complaint or appeared as a witness. Moreover, the County states that these Complainants are "the first to ever assert injury from a dusty gravel road." County Br. at 7. Finally, Respondents note that Complainants' testimony relating to damages consists solely of personal knowledge and opinion and is not supported by expert testimony or other objective means.

Without taking a position as to whether these Complainants are the first ever to assert injury from a gravel road, the Board believes that Complainants do suffer injury to their property caused by dust from the road. The Board recognizes that dust in sufficient quantities can damage electrical appliances, curtains, carpets, fruit and vegetable plants, to name but a few household items, and believes that such damage has occurred here. However, the Board cannot find that the character and degree of injury presented in this case is any more extreme than is suffered by any other gravel road resident. It is only logical that gravel roads cause more dust than paved roads. Those who live on or near gravel roads should reasonably expect to endure dustier conditions. In a real sense, the dust goes with the territory. However, that is not to say that dust resulting from inappropriate or improperly applied surface materials cannot result in a violation. That just is not the case here.

Complainants state with respect to factor (2) that the primary source of the pollution is the road surface, which is activated by the usage of heavy trucks. Complainants argue that while there may be some economic value regarding the usage by the trucks of the road, there is no particular social or economic value to the road surface in question. Respondents argue that the road serves the public in general as a means for transportation and that Tammsco's use is less than 14% of total usage. Tammsco argues that the road provides a necessary and efficient transportation link between the Tammsco plant and its mine site, which provides employment for its 35 area people.

The Board must agree with Respondents. The value of the road is obvious. It provides a means of travel and transportation of goods and services to and from the area, not only for Tammsco, but also for the Complainants and the public as a whole. The Board cannot accept Complainants' argument that the "road surface" has no social or economic value. The road surface is the road. That the County can afford to provide and maintain only a gravel road is unfortunate, but the Board believes that the benefits of providing the gravel road clearly outweigh the burdens.

With respect to factor (3), Complainants argue that the road surface has no particular suitability to the area in question and that the homes of the residents were in existence "prior to the time this particular road surface, which is in question," was placed on the road. Respondents argue that the unpaved road is not only suitable, but also typical of roads located in the area and that the materials are taken from local quarries. Also, Tammsco argues that both the use of the road and the Tammsco plant predate the Complainant Foltz's vegetable business.

The Board does not believe that the record supports a finding that the surface of McDaniel's School Road differs in its geological composition from that of other gravel roads in Alexander County, or any other Counties for that matter. Further, the record does not support a finding that the geological constituents of the road, i.e., chert, limestone, are unsuitable to the area. Thus, the Board cannot find that this road or that this road surface is unsuitable to the area in which it is located.

Finally, with respect to factor (4), the Complainants, while recognizing the approximate cost of \$7,000 per mile of blacktopping, argue that since they live only one-quarter of a mile apart, "the road could be asphalted in front of and between their homes at a minimal cost when compared to the injuries they are suffering" (Comp. Br. at 7). Further, Complainants suggest that the trucks could take an alternate route that would not significantly extend this travel time or mileage. Respondents argue that blacktopping the one-quarter mile area in question is not feasible in that such action would establish a precedent of great cost to the County with respect to its many miles of unpaved roads. The County estimates that the cost to its taxpayers of paving all its roads would exceed \$1,400,000 not including the cost of maintenance. Finally, Tammsco argues that it is economically unreasonable to require rerouting of its trucks in light of the small number of complaints having "dubious and disputed damage claims" and the increased costs and production time losses associated with the alternate route.

On this point, the Board concurs with Respondents. While blacktopping the quarter-mile section of McDaniel's School Road



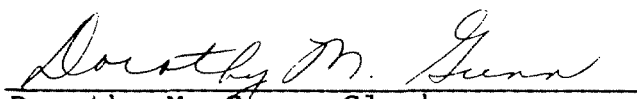
in question would appear to solve Complainants' dust problems, this solution ignores the precedential impact such action would have not only on Alexander County but also on all other counties responsible for gravel roads. The County estimates a cost of \$7,000 per mile to pave gravel roads. This estimate is unrefuted in the record. Although the record is silent as to the number of miles of gravel road abutting private property, the Board is inclined to believe that to require paving in this instance would establish a precedent that counties simply cannot afford. Moreover, as to the alternate route, Complainants have not demonstrated that the alleged reduction in dust would justify the increased costs and production time losses to Tammsco. Finally, the Board notes that the record indicates that Tammsco has already made good faith efforts to reduce the dust problems by placing tarps over its trucks and requiring speed reduction on McDaniel's School Road. It thus appears that Tammsco has already accomplished what could reasonably be required of it. The Board trusts that Tammsco will maintain its dust-reduction efforts on a permanent basis.

In short, the Board finds that the interference with the enjoyment of life or property to Complainants is not unreasonable in light of all the circumstances and considerations discussed above. Thus, Complainants have not met their burden of proving that Respondents have caused or threatened or allowed the discharge or emission of any contaminant into the environment so as to cause air pollution or a violation of the Act or Board regulation. The Board sympathizes with the Complainants' situation, i.e., living with the dusty effects of a gravel road. However, the Board cannot find that, based on the evidence in the record, any violation of the Act or Board rule exists.

This Opinion constitutes the Board's finding of fact and conclusions of law in this matter. This matter is dismissed: the Clerk is directed to close the docket in this proceeding.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 16<sup>th</sup> day of June, 1988 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board