

ILLINOIS POLLUTION CONTROL BOARD  
April 27, 1978

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 72-51  
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 CPC INTERNATIONAL, INC., )  
 )  
 Respondent. )

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

This matter comes before the Board on remand in CPC International, Incorporated v. Pollution Control Board, 32 Ill. App.3d 747, 336 NE2d 601 (1975).

On June 21, 1973, the Board found Respondent in violation of Section 9(a) of the Environmental Protection Act and Rule 3-3.112 of the old Rules and Regulations governing the control of air pollution as amended to August, 1969. The Board's findings show that odors and emissions from Respondent's Bedford Park corn wet milling plant caused an unreasonable interference with the use and enjoyment of life and property so as to constitute unlawful air pollution. The Board also found that particulate emissions from the facility exceeded the standard of 0.47 lb/10<sup>6</sup> BTU calculated pursuant to Rule 3-3.112. Based on these violations, a \$10,000 penalty was assessed. CPC agreed in a Proposal for Settlement to a compliance program; this proposal was accepted by the Board in its Order.

The Appellate Court remanded because, in finding a violation of the Act and the Regulations, the Board failed to enumerate specifically the considerations required by Section 33(c) of the Act. 336 NE2d, at 605. In the Court's opinion, such a failure substantially impeded judicial review. In remanding, the Appellate Court relied on the Illinois Supreme Court case of Incinerator, Incorporated v. Pollution Control Board, 59 Ill.2d 290, 319 NE2d 794 (1974). In Incinerator, the Court directed that the Board "must take into consideration the factors referred to in Section 33(c) and must indicate that it has done so in its written Opinion by stating the facts and reasons leading to its



decision," 314 NE2d, at 797. The Appellate Court read this as requiring specific enumeration of the 33(c) factors. It has become apparent since Incinerator and the CPC decision, however, that the Board need not specifically enumerate the 33(c) factors. In Incinerator, the Court only set up a substantial compliance test and, because it appeared from the record that the Board considered reasonableness in light of Section 33(c), the case was not remanded for specific consideration of the factors. 319 NE2d at 798. Since CPC, the Illinois Supreme Court has addressed this issue again in Processing and Books, Inc. v. Pollution Control Board, 64 Ill.2d 68, 351 NE2d 865. The Board finds that Processing and Books controls this case since there, as here, a Board decision pre-dating Incinerator is involved. The Supreme Court held that "the Board's Order in the case before us was entered prior to our decision in Incinerator and the suggestions there advanced as to the desirable form of Orders are not applicable to this case." 351 NE2d at 868. Because of this ruling, the Board feels that its CPC Opinion meets the standards of form set out for pre-Incinerator cases.

The Board agrees that consideration of Section 33(c) factors is an essential part of the decision-making process where the reasonableness of the action is at issue. In reviewing the CPC record, the Board concludes that a violation of Section 9(a) occurred. The record clearly shows harm to individuals living in the area. The presence of odors has long been considered a source of air pollution. City of Monmouth v. Pollution Control Board, 313 NE2d 161, 163. Furthermore, the language of Section 9(a) contemplates that causing the "discharge of any contaminant...so as to violate rules and standards adopted by the Board" shall also constitute a violation. The record is equally clear that particulate emissions from the CPC plant exceeded the standards of Rule 3-3.112. These factors must be weighed against the social and economic value of the pollution source, the suitability of the source to the locale, and the practicability of reducing the emissions. It does not appear from the record that the social utility of the CPC plant is at issue; as noted in the Board Opinion, the facility employs over 2100 people. That CPC was allowed to continue operation while instituting its compliance plan mitigates against undue economic loss and distinguishes Incinerator where a cease and desist Order was entered. In addition, CPC stipulated to a compliance plan in the original action. Since the burden of proving undue hardship or unfeasibility of the remedy requested is placed on the Respondent, Processing and Books, 351 NE2d at 869, the Respondent's agreement to improve the facility leads the Board to conclude that compliance is technically feasible and economically reasonable.



The Board has been directed by the CPC Court to apply the 33(c) analysis to violations of regulations. The standard in Rule 3-3.112 does not require a reasonableness analysis nor are we involved in the rule-making process in Section 10 as cited by the Court. In ascertaining a regulation violation, either the standard has been breached or it has not. The Board prefers the language used by the Appellate Court that "the rule sets forth the standard for allowable emissions of particulate matter. Then the actual emissions from a specific operation must be compared to the allowable emissions." 336 NE2d at 601. In reviewing the original Opinion, it appears that violations of Rule 3-3.112 occurred regardless of whether the Agency's or CPC's computations were used. The Board must therefore reaffirm its decision finding CPC in violation of Rule 3-3.112.

Determination of penalties, compliance plans and necessary Orders in both Section 9(a) and regulatory violations should take into account those factors enumerated in Section 33(c). Turning to the case before us, we apply this analysis to the penalty imposed in the initial Order. We agree with the Court's finding that CPC has established good faith by agreeing to a compliance program and has made substantial effort to correct the problems complained of by the Agency. Upon reconsideration we find that the imposition of a penalty at this time would not aid in the enforcement of the Act. The penalty of \$10,000 in the original PCB 72-51 Order is hereby reversed.

This Opinion constitutes the findings of fact and conclusions of law in the matter before us.

ORDER

It is the Order of the Pollution Control Board that:

1. **CPC International, Incorporated** violated Section 9(a) of the Act by causing unreasonable interference with the enjoyment of life and property and by violating regulations adopted by the Board.
2. **CPC International, Incorporated** violated Rule 3-3.112 by causing excessive emissions of particulate matter.

3. CPC International shall adhere to all the terms contained in the Proposal for Settlement filed February 27, 1973, including the provisions for filing permit application, performance testing, adjustments, progress reports, odor panel tests and performance bond, as are still necessary for compliance with the Act and Regulations.
4. Within 45 days of the adoption of this Order, CPC International, Incorporated shall execute and forward to both the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 and the Pollution Control Board a Certification of Acceptance and Agreement to be bound to all terms and conditions of this Order. The 45 day period shall be held in abeyance during any period this matter is being appealed. The form of said certification shall be as follows:

CERTIFICATION

I (We), \_\_\_\_\_ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 72-51 hereby accept said Order and agree to be bound by all of the terms and conditions thereof.

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 27<sup>th</sup> day of April, 1978 by a vote of 4-1

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board