

ILLINOIS POLLUTION CONTROL BOARD
October 8, 1981

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-181
)
ILLINOIS FRUIT AND PRODUCE)
COMPANY, an Illinois corporation,)
and ATCHISON TOPEKA and)
SANTA FE COMPANY, a Delaware)
corporation,)
)
Respondents.)

MS. MARY JO MURRAY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MS. JUDITH KELLY, DRENDEL & KELLY, APPEARED ON BEHALF OF THE RESPONDENT ILLINOIS FRUIT AND PRODUCE COMPANY.

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

This matter comes before the Board upon a complaint filed October 1, 1980 by the Illinois Environmental Protection Agency (Agency) naming as respondents Illinois Fruit and Produce Corp. (IFP), an Illinois corporation, and the Atchison, Topeka and Santa Fe Company (Santa Fe), a Delaware corporation. The complaint alleges violations of Section 24 of the Illinois Environmental Protection Act (Act) and Rules 102 and 202 of Chapter 8: Noise Pollution in connection with emissions from refrigerated railcars at a warehouse owned by IFP in Streator. An answer was filed on November 3, 1980. Hearings were held at Ottawa on June 26, July 10 and July 28, 1981. Members of the public attended.

IFP owns a warehouse situated near Twelfth Street and Quality Lane in Streator. The facility is in LaSalle County, but adjacent residential property is actually in Livingston County (R-9,334). The warehouse is on a spur off the mainline of the Santa Fe Railroad. Proceeding west from the warehouse one encounters first the siding, then the mainline tracks, then Wasson Street and finally residential houses (Ex. 20). The distance is about 230 feet (R-202, Ex. 23). The warehouse is Class B land; the residences are Class A (R-48).

Refrigerated railroad cars are spotted on the siding and unloaded into IFP's warehouse. This case concerns noise emitted from refrigeration units on the siding.

Count I alleges emission of noise that unreasonably interferes with enjoyment of life, in violation of Rule 102 and Section 24 of the Act. Count II alleges violation of noise standards for sound emitted to Class A land during daytime hours, in violation of Rule 202 and §24. The complaint alleged continuing violations from August 24, 1978 and particularly on August 24 and September 27, 1978, and on April 17, July 10, and November 2, 1979.

The warehouse commenced operation around January, 1978. On June 12, 1978, Mr. George Palya filed a complaint with the Agency (R-10, 20; Ex. 6). On July 25 the Agency conducted an inspection, but there were no cars on the siding (R-39, 158, 194, 202; Ex. 20, 21). The Agency conducted a second inspection on August 24 (R-39, 44, 81, 86, 93, 144; Ex. 8, 22). Two cars were present; one or both refrigerators were operating on self-contained diesel power. Sound pressure level readings at frequencies greater than 1000 Hz (Hertz) indicated violations of daytime Class B to A noise standards of Rule 202. Levels were four to sixteen decibels in excess of the standards in this range. Levels were approximately equal to the standards for intermediate frequencies and in compliance at low frequencies (Ex. 8).

On August 22, 1978 the Agency notified IFP that it had received a complaint (R-162, 258; Ex. 22). On September 12 IFP responded with a letter from Mr. Don Donelson, general manager and vice president (Ex. 23). The response indicated that IFP believed sound levels at the residences to be acceptable and at a level comparable to traffic and passing trains. IFP stated that it made a definite effort to unload cars and turn them off as soon as they arrived. IFP stated that Mr. Palya was "over-reacting to the problem".

Mr. Palya testified that during the first six months IFP had had as many as four cars on the siding at one time and that one car "ran for ten solid days" during both day and night. Cars would arrive on Friday afternoon and run through the weekend while nobody was working at the warehouse. The manager of IFP refused Mr. Palya's suggestion that IFP discontinue this last practice (R-11).

On September 27, 1978 the Agency conducted a third inspection (R-48, 163, 188, 204, 237, 249 and 259; Ex. 10, 24, 25). Three cars were on the siding, but only one railcar refrigeration unit was operation, on diesel power. Sound level measurements taken from residential property indicated violations of up to nine decibels over the daytime Rule 202 standard for high frequencies.

The Agency received additional citizen complaints between October 30 and November 29, 1978 (R-245, Ex. 5, 19).

On November 2, 1978 a compliance conference was held (R-168, 196, 201, 205, 252, 259; Ex. 25, 26, 27, 28, 29, 30). Discussion centered on construction of a barrier wall and scheduling of railcars (R-252, 254; Ex. 38, 29). The Agency requested notification of any corrective measures IFP planned to take (Ex. 28).

On January 2, 1979 IFP wrote a letter to the Agency indicating that it was studying a concrete wall. The contractor could not work in winter months and would not quote a price (Ex. 29, 30). IFP indicated a need to examine federal regulations on railroad construction (Ex. 30).

The refrigeration units on the cars have four components: a diesel engine, an electric generator, an electric motor, and a compressor. The compressor motor can be powered by the diesel generator, or by connection to an external electrical source (R-282, 304, 357. On January 2, 1979 IFP suggested the possibility of installing an electric supply system so the diesels could be turned off. IFP suggested this might bring the noise down to an acceptable level (Ex. 30).

On February 6, 1979 the Agency received another citizen complaint (Ex. 21).

On April 17, 1979 the Agency conducted a fourth inspection (R-54, 104, 239, 259; Ex. 11, 12). One refrigerator car was operating. Sound level measurements indicated violations of daytime standards for frequencies in excess of 500 Hz. Levels 2 to 15 dB over the standards were recorded. Levels at lower frequencies were approximately equal to or slightly less than the standards (Ex. 11).

On May 29, 1979 the Agency conducted a fifth inspection (R-61, 65, 97, 101, 121, 144; Ex. 13, 14). One refrigeration unit was in operation. Sound levels were less than the standards for all frequencies (Ex. 14). The report indicated that construction of electrical outlets had commenced.

On July 10, 1979 the Agency conducted a sixth inspection (R-66, 78, 109, 144, 175, 259; Ex. 15, 31). Six railcars were on the siding, four refrigerated. Three refrigerators were operating. Electrical hookups were not yet in operation. Measured sound levels were as much as 11 dB in excess of daytime standards at frequencies in excess of 1000 Hz. Levels at lower frequencies were approximately equal to the standards.

On July 27, 1979 the Agency notified IFP of the inspection. The letter noted the slow work on the electrical hookups (R-198, Ex. 32). On August 8, IFP explained the delay and indicated it had spent over \$20,000 (Ex. 33). On October 5 and 19, IFP further stated that extension cords had been received and that the electrical system was in operation (Ex. 34, 35). The latter letter makes reference to an Agency enforcement letter of October 5, which is not in evidence. IFP indicates that the Agency had taken exception to compressor noise. IFP stated that "as we were always talking about the noisy engine in the past, we did not believe it to be a major problem." (sic) (Ex. 35).

On November 2, 1979 the Agency conducted a seventh inspection. Three cars were on the siding. One refrigerator was running without diesel power (R-67, 78, 112, 144; Ex. 16, 17). Sound levels were as much as 11 dB in excess of the daytime standards for frequencies in excess of 1000 Hz. However, levels were within the standard for frequencies of 500 Hz or less. This low frequency sound was markedly less than with the diesels running (Ex. 16). At this point it was apparent that low frequency noise was associated with the diesel/generator; high frequency with the motor/compressor.

On December 6, 1979 the Agency notified IFP of the inspection. The Agency stated that even with electrical hookups compressor noise continued to be a problem (Ex. 36). IFP responded with two letters on December 28. IFP indicated that construction of a building over the siding would cost \$600,000 and that a wall would not be effective because of large openings required by federal regulations.

This action was commenced against IFP on October 1, 1980.

On March 23, 1981 the Agency conducted its eighth inspection. (R-67, 80, 119, 122, 126, 138; Ex. 18). One refrigerated car was operating on electrical power and another on diesel. This latter was delivered immediately before the measurements were taken. Sound pressure levels were as much as 6 dB over the daytime standards for frequencies of 1000 Hz or greater. Levels were in compliance with the standard for lower frequencies.

Mr. Palya testified that the noise kept him from opening windows and irritated him (R-10). Mrs. Alexandra Cole testified that it was like a loud lawnmower going constantly. It interfered with sleep and prevented conversation in the yard (R-27).

IFP cross-examined the Agency's witnesses and questioned the proof on several points. However, IFP's case went to mitigation.

The Board finds that IFP violated the daytime noise standards of Rule 202 for Class B to Class A land on August 24 and September 27, 1978 and on April 17, July 10, and November 2, 1979. The Board also finds IFP in violation of Rule 102 and §24 of the Act, unreasonable interference with enjoyment of life, substantially as alleged in the complaint.

On June 22, 1981 IFP filed a petition requesting a variance from Rules 202 and 203 (PCB 81-104). Upon request of IFP the Board has incorporated the record into this action (Order of September 3, 1981). The Board will consider the compliance plan in connection with the penalty and in connection with the variance which will be granted in a separate Order.

On September 12, 1980 IFP hired Mr. Bruce Kleinlein as general manager (R-347, 367, 369, 374). The previous manager's nonresponse to complaints was an important factor which led to Agency involvement and the filing of this action (R-10, 347). On review of the record it appears that there were several inexpensive steps IFP could have taken early on which would have avoided this enforcement action. IFP's early intransigence is a major factor in deciding the amount of the penalty.

There are three approaches to compliance: use of electrical hookups to eliminate diesel noise; reduction in the number of cars and the time the refrigerators are running; and, construction of a barrier wall to block sound.

As is noted above, on January 3, 1979 IFP suggested installation of the electrical hookups. These were completed prior to December 6, 1980 and failed to achieve compliance. The Agency has denied recommending this, but it clearly acquiesced in their construction (Ex. 31). These did eliminate the low frequency noise which, although usually in compliance with Board standards, was a major source of irritation (R-11, 12, 347). The electrical hookups will be used as part of the overall noise reduction plan (R-376). They cost \$18,000 to \$20,000 (R-342).

In the variance petition IFP asks for time prior to construction of a barrier wall to implement steps to reduce the number of cars and the time of refrigerator operation. IFP has not yet committed itself to barrier construction and feels that other measures may satisfy the neighbors even if they still involve occasional noise in excess of the standard.

IFP has an oral agreement with the Santa Fe which provides that the latter will hold cars until IFP is ready to unload them (R-270, 296, 344, 349, 358, 370). The diesel units will be promptly turned off and compressors run by electricity (R-302, 353, 356, 376, 381). Refrigerators will not be left running overnight or over weekends (R-304, 316, 344, 350).

It is not clear whether an enforceable contract has been executed with the Santa Fe (R-349). Since this is an essential part of the plan, the Board will order the railroad to hold the cars until requested by IFP.

The IFP warehouse operates around the clock, five days per week. Trucks delivering produce are unloaded in the morning, railcars in the afternoon. At night orders are made up and delivery trucks loaded (R-335, 360). IFP's past inability to unload cars on arrival was in part caused by its failure to allocate to the railcars manpower from unloading or loading trucks. IFP has now agreed to increase the work crews so the cars can be unloaded in 3 to 4 hours, and to schedule overtime if necessary to unload the cars on arrival (R-358, 372). A standby crew is available if it is necessary to unload a car on Saturday (R-358). IFP estimates the cost of the work changes at about \$10,000 per year (R-359, 371).

Under its former practice IFP turned refrigerators off upon completion of unloading. It now disconnects the compressors from the electric source as soon as possible. In winter months it may be possible to shut the refrigerators off on arrival. During summer it may be necessary to run them for up to two hours (R-302, 353, 356, 376, 381). IFP has estimated its rate of railcar receipts at ten to twelve per month (R-297, 340, 377, 381). The maximum hours of operation of compressor units would then be about twenty to twenty-four hours per month (R-377).

IFP concedes that the steps noted above will leave it out of compliance during delivery of a car and possibly for a time during unloading. Compliance during unloading may require construction of a barrier wall or enclosure. The latter is estimated to cost \$250,000 (R-365).

IFP hired a noise consultant during 1981 (R-276). There are three recommended barrier walls: the temporary Agency version, the permanent Agency version and IFP's consultant's version (R-186, 280, 303, 312, 318, 362, 371, 378). The Agency estimated \$26,000 for a 210 by 12 foot wall of railroad ties and transite (R-186). IFP earlier expressed a preference for a concrete wall which the Agency estimated at \$250,000 (R-186, Ex. 29, 30).

IFP's expert questioned the Agency's designs on account of effectiveness, weather resistance and structural soundness (R-284, 288). He recommended that, if a barrier was to be built, it be of "4-inch thick standard industrial grate, sound absorptive panel" (R-287). These would be on both sides of the cars to stop reflection off the building. The walls would be 20 feet high. The panels would be hung from a steel frame on concrete footings. The total cost would be \$25,000 to \$30,000 (R-289, 313, 363). There is no guarantee that any of the proposals would result in full compliance (R-364).

IFP rejected the Agency's suggested temporary structure in part because of the effect on the value of its new facility (R-379). In its first letter to the Agency, IFP noted that its facility was new and that "our old plant was quite close to homes and we were aware of these problems." (Ex. 23).

The Board notes that the parties have not addressed the possibility of a vegetative barrier. There appears to be space between the siding and mainline in which trees and shrubs could be planted (Ex. 20, 21). There may also be room between the tracks and road. The Board will require as a condition of the variance in PCB 81-104 that IFP submit to the Agency within 60 days a report on planting feasibility. If the Agency finds the barrier feasible, IFP shall conduct and maintain the required plantings.

As noted above, the noise interfered with normal activities in the residential area from January, 1978 through June, 1981. The social and economic value of the warehouse is not questioned (R-23). The area exhibited high ambient noise levels and was subjected to the passing of 32 trains per day which made for more noise than that in question here (R-266). The area adjacent to the tracks is suitable for warehouse activity. Noise reduction is technically practicable and economically reasonable even if construction of a barrier wall is necessary.

The Board will order the respondents to perform various steps toward compliance. The Board will not include a cease and desist order, noting the variance. The Board will require Respondent to take additional measurements if requested by residents. The Board notes that the principal complainant has expressed satisfaction with current compliance (R-12).

Santa Fe did not appear in this proceeding through counsel, although its agent attended and testified (R-264). IFP claims Santa Fe is exonerated through a clause in its contract with Santa Fe (R-375, 400). The record in this case is adequate to

support a finding that Santa Fe caused or allowed the violations in question. The railroad cannot delegate its responsibility to comply with environmental laws.

The Board finds that a penalty of \$750 is necessary to aid enforcement of the Act in view of IFP's early reluctance to take simple steps to reduce noise upon receipt of complaints. No monetary penalty will be assessed against Santa Fe. This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER


1. Respondents Illinois Fruit and Produce Corp. and the Atchison, Topeka and Santa Fe Company have violated Rules 102 and 202 of Chapter 8: Noise Pollution and §24 of the Environmental Protection Act.
2. Respondent Illinois Fruit and Produce Corp. shall comply with the conditions of the variance in PCB 81-104.
3. Respondent Atchison, Topeka and Santa Fe Company shall hold cars until Illinois Fruit and Produce Corp. requests delivery.
4. Within thirty-five days of the date of this Order, Respondent Illinois Fruit and Produce Corp. shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$750 which is to be sent to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

IT IS SO ORDERED.

Mr. Goodman concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 8th day of October, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board