ILLINOIS POLLUTION CONTROL BOARD
December 6, 1984

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	PCB 84-21
WARD CROP SERVICE, INC., an Illinois corporation,	)	
Respondent.	)	

MR. JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MARTIN, CRAIG, CHESTER & SONNENSCHEIN (MR. NEIL F. FLYNN, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on a February 16, 1984 Complaint filed by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that the Respondent caused or allowed air pollution by causing the emission of particulate matter during its corncob loading and storage operations in such quantities so as to unreasonably interfere with the use of property adjacent to its facility in violation of Rule 102 of Chapter 2: Air Pollution Regulations (35 Ill. Adm. Code 201.141) and Section 9(a) of the Illinois Environmental Protection Act (Act).

Count II alleged that the Respondent caused noise pollution by allowing its corncob loading device to emit sounds beyond the boundaries of its facility which unreasonably interfered with the enjoyment of property adjacent to the facility in violation of Rule 102 of Chapter 8: Noise Pollution (35 Ill. Adm. Code 900.102) and Section 24 of the Act.

Count III alleged that the Respondent caused or allowed the emission of sound during daytime hours from its property-line-noise-source located on Class C (agriculture-related) land to receiving Class A (residential) land which exceeded allowable

octave band sound pressure levels in violation of Rule 202 of Chapter 8: Noise Pollution (35 Ill. Adm. Code 901.102(a)) and Section 24 of the Act.

A hearing was held on September 25, 1984. The parties filed a Stipulation and Proposal for Settlement on October 18, 1984.

The proposed settlement agreement resolved all issues in this case except with regard to the issue of an appropriate penalty to be imposed by the Board. The Agency has asserted that a penalty of at least $3,500.00 is warranted in this case, while the Respondent has stated that it believes that no penalty is appropriate in light of the unique circumstances involved here. (R. 8-12). Thus, the penalty issue was left open for Board determination.

The Respondent, Ward Crop Services, Inc. (WCS), is an Illinois corporation run by its President and Chief Executive Officer, Mr. Everett L. Ward. From 1975 until 1983, the Respondent operated a corncob storage and loading facility (facility) in Blandinsville, McDonough County, Illinois. The Village of Blandinsville has an approximate population of 900 people. Operations at WCS's corncob facility were discontinued in November, 1983. (Stip. 10).

WCS's facility, which is along and adjacent to the only railroad siding in Blandinsville, is located on an irregularly shaped, .34 acre of land which is leased from the Atchison, Topeka & Santa Fe Railway Company and was previously leased from the Toledo, Peoria & Western Railroad Company. (Stip. 2).

There are various other businesses located in the immediate vicinity of the Respondent's facility (i.e., within about one mile along the railroad track adjacent to the facility) including a lumber yard, three grain elevators, two fertilizer storage facilities, a bulk fuel storage plant, a construction company, a propane plant, a hog buying station, and an automobile salvage operation. (Stip. 2; see: Exhibit 1). Additionally, there are four residential properties located in the area, including three frame houses (which are located across the railroad tracks about 100 feet from the WCS facility) and a mobile home which is located on a piece of property immediately next to the Respondent's facility. (Stip. 2-3; see: Exhibit 2). These various land uses exist contemporaneously because of the nature of the community and the fact that both the Village of Blandinsville and McDonough County have no zoning ordinances. (Stip. 2).

The Respondent began its corncob operations at its Blandinsville facility in 1975. Local farmers and seed corn producers who had surplus corncobs to sell first brought these cobs to the WCS facility via truck for storage. These corncobs

were stored in open piles on the site. The corncobs were then loaded on railroad cars by WCS employees and subsequently transported to the Chemicals Division of the Quaker Oats Company which utilized the cobs in the production of Furfural. (Stip. 3-5; see: Exhibit 3). WCS's operations were primarily seasonal in nature because its facility was usually operated only during the summer and fall months of the year when corncobs were available. (Stip. 3).

Loading methods and procedures at the facility varied somewhat over the years. Between 1975 and 1977, WCS loaded the corncobs into specially designed "open top" railroad cars commonly known as "gondola cars". Corncobs were loaded into the open top of the gondola cars by means of a conveyor belt device which was driven by a five horsepower gas engine. (Stip. 3). These specially built gondola cars were designed and provided by the carrier (i.e., the Illinois Central & Gulf Railroad Company). The Illinois Central & Gulf Railroad Company terminated its use of gondola cars sometime in 1977 and WCS was therefore unable to load its corncobs into the no longer available "open top" railroad cars. Instead, between 1977 and October, 1981, the Respondent loaded its corncobs into railroad cars with "side doors" by means of a blower driven by a tractor engine. (Stip. 3-4). This corncob blower was not enclosed. The corncobs were blown through a one-eighth inch thick steel pipe which was about twelve inches in diameter. The corncobs were dumped into an open hole at the base of the steel pipe just before they were loaded (i.e., blown) into the railroad cars through the open side doors. (Stip. 4).

The Respondent made various changes and engaged in efforts to reduce the noise levels and adverse effects of its loading operations in response to requests by neighboring property owners and local officials in October of 1981. (Stip. 4). To eliminate the use of the tractor engine, the Respondent began to use an electric blower system. Additionally, the Respondent placed the corncob blower in an insulated enclosure and in a ten foot by twelve foot wood frame. Furthermore, between October, 1981 and November, 1983, the corncobs were loaded into the railroad cars via a specially designed airstream device. These corncobs, which have first been loaded into a hopper, are then fed (by means of a hydraulic auger) into a 12,000 cubic foot per minute airstream which propelled the corncobs through the one-eighth inch thick steel pipe about twelve inches in diameter into the railroad boxcars. (Stip. 4). To help eliminate noise problems, a one-fourth inch solid steel padded and insulated deflector at the end of the steel pipe directed the corncobs away from the open doors of the railroad boxcars. Before October, 1981, the steel deflector was not padded or insulated. Corrugated cardboard and metal grain doors, which are about five feet high, were used to block off the lower portion of the open boxcar doors, while wire mesh

screens covered the upper portion of the boxcar doors. The special airstream corncob loading device had an average loading rate of 30,000 pounds of corncobs per hour and a maximum loading rate of 50,000 pounds of corncobs per hour. (Stip. 4-5).

In the Stipulation, the parties indicated the gross receipts from the sale of corncobs during the years between 1980 and 1983, but failed to specify the applicable net income figures. In 1983, the Respondent shipped 988 tons of corncobs in 41 railroad cars and had gross receipts of $15,539.00. (Stip. 5; R. 129-131).

It is stipulated that the Agency notified the Respondent in a letter dated October 13, 1981 that WCS was improperly operating its facility with respect to fugitive particulate matter from the open storage of corncobs and its loading operations. (Stip. 5-6; see: Exhibit 4). Particulate matter, such as dirt, dust, bits of corncobs, and other materials, would sometimes blow onto adjacent properties on windy days and would interfere with the adjacent residents' use of their property. Counsel for the Respondent agreed to meet and discuss this matter with Agency personnel in a letter dated October 26, 1981 and they requested that the proper permit applications for the facility be forwarded to WCS. (Stip. 6; see: Exhibit 5). On December 9, 1981, representatives of the Respondent and the Agency held a meeting at the facility and the parties agreed to various procedures and changes in equipment which were to be included as special conditions in a 12 month Operating Permit. (Stip. 6; see: Exhibit 6). On July 27, 1982, the Agency conducted an additional inspection of the Respondent's site in response to further complaints from private citizens which had been received. On July 29, 1982, the Respondent submitted an application for an Operating Permit for its corncob transfer blower. (Stip. 6; see: Exhibit 7).

On August 16, 1982, the Agency conducted a Noise Survey to ascertain if WCS's corncob processing operations were in violation of applicable noise standards. After these tests were made, the Agency, in a letter dated August 26, 1982, alleged that the Respondent's operations were in violation of the applicable noise regulations. (Stip. 6; see: Exhibit 8). Accordingly, on September 2, 1982, the Agency denied the Respondent's July 29, 1982 application for an Operating Permit for a corncob transfer blower on the basis that the applicable air pollution and noise regulations might be violated. (Stip. 6; see: Exhibit 9).

In response to the Agency's Noise Survey of August 16, 1982 and the Agency's permit denial letter of September 2, 1982, the Respondent took further measures in an attempt to rectify the situation. The Respondent constructed and installed a special device to control fugitive particulate matter which consisted of a wood screen and metal frame covered with two layers of wire screen which was about twenty feet by six feet in size.

(Stip. 7). The heavy wire screen layer consisted of relatively large one-half inch openings, while the fine layer was made of 20 mesh wire. The screen was placed tightly against the railroad boxcar opening and was secured in place with rubber straps and wire cables, while the corncob loading pipe extended through the middle of this screen and was surrounded by rubber flaps which were intended to minimize any air leakage around the steel pipe. (Stip. 7; see: Exhibits 10 and 11; Exhibit A & B). To help eliminate noise problems, the Respondent constructed and installed a special noise control device which was lined with four inch fiberglass insulation and two inch styrofoam open cell insulation. This noise control apparatus was attached to the intake side of the ten foot by twelve foot wood frame structure which enclosed the motor and air blower. Additionally, two inch thick open cell foam rubber insulation was also installed on the outlet pipe in the railroad car to help reduce noise. (Stip. 7; see: Exhibits C, D, and E).

The Respondent has indicated that it spent approximately $1,500.00 on the previously mentioned equipment and materials to reduce noise levels and control fugitive particulate emissions. After the construction and installation of this corrective equipment, the Respondent reapplied to the Agency for an Operating Permit for its corncob transfer blower on October 29, 1982. (Stip. 7-8; see: Exhibit 12). However, the Agency notified the Respondent in a letter dated December 20, 1982 that this matter had been referred to the Agency's legal staff for preparation of an enforcement case. (Stip. 8; see: Exhibit 13).

To ascertain if the noise problems had been alleviated, the Agency again conducted a Noise Survey of the Respondent's facility on January 11, 1983. (Stip. 8). In a letter dated January 24, 1983, the Agency notified the Respondent that the operation of its corncob blower was still not in compliance with the requisite noise regulations and suggested that the Respondent construct a sixteen foot high, fiberglass-lined barrier enclosing the WCS facility on its north, east, and west boundaries. (Stip. 8; see: Exhibit 14). Thus, on January 27, 1983, the Agency denied the Respondent's October 29, 1982 application for an Operating Permit for its blower. (Stip. 8; see: Exhibit 15).

On February 2, 1983, the parties conducted another compliance meeting in an effort to resolve matters and discussed the cost and feasibility of the construction of a sixteen foot high, fiberglass-lined sound barrier to eliminate any future noise problems at the site. (Stip. 8). On February 16, 1983, as a result of the previously mentioned discussion, the Respondent had prepared a proposal and a sketch which estimated the cost of construction and installation of a sixteen foot high sound barrier to be $5,176.97. (Stip. 9; see: Exhibit 16; R. 128-129).

However, the sound barrier was never constructed and the Respondent discontinued all corncob operations at its facility in November, 1983. (Stip. 9).

The proposed settlement agreement provides that the Respondent: (1) admits that it violated 35 Ill. Adm. Code 201.141 and Section 9(a) of the Act intermittently between 1975 and November, 1983 by causing the emission of particulate matter during its corncob loading operations in such quantities so as to unreasonably interfere with the use of property adjacent to its facility; (2) admits that it violated 35 Ill. Adm. Code 900.102 and Section 24 of the Act intermittently between 1975 and November, 1983 by its use of the corncob load device which emitted sounds beyond the boundaries of its facility which unreasonably interfered with the enjoyment of property adjacent to its facility; (3) agrees to cease and desist from further violations; (4) agrees to continue the cessation of operations at the site (i.e., the Respondent discontinued the storage and loading of corncobs at property in November, 1983) and to remove all remaining corncobs from the facility within thirty days of the Board's Order in this case; and (5) agrees to apply to the Board for a variance and to the Agency for any applicable permits if, in the future, operations at the site will be renewed. (Stip. 10-12).

The parties have left the amount of the penalty, if any, for Board determination and testimony at the hearing revolved around the penalty issue. At the hearing, Mr. Lee Ward, the son of the president of WCS, testified that all the cob moving equipment has been removed from the site and indicated that the company has no intention of resuming this operation. (R. 109-113; R. 120; R. 121-131; see: Joint Exhibits GG, HH, II, and JJ; Stip. 10-11).

At the hearing, three neighbors (Mrs. Patsy Ulrich; Mrs. Laura Melvin; and Mrs. Debra Starbuck) testified that, especially after the summer of 1981 (when the Respondent's corncob operations increased in scope), the operations at the WCS facility resulted in sporadic irritating noises and dust which interfered with their families' use and enjoyment of their property. (R. 27-44; R. 44-66; R 67-74; see: Joint Exhibits 1 & 2; Joint Exhibit 6; Complainant's Exhibits A, B, C, and D). Mrs. Laura Melvin, who lives with her husband in a mobile home about 75 feet away from the Respondent's site, appeared to be the most adversely affected.

Mr. Brian P. Holland, the Village Attorney, testified that the Village Board basically did not wish to be involved in this dispute once the Respondent and the Agency had entered into an interim agreement to adopt corrective measures. (R. 79-85; see: Joint Exhibit 19). Mr. Eric Burling, executive vice-president of the First National Bank in Blandinsville, testified that this whole matter was basically a misunderstanding among neighbors and stated that the Respondent had exerted good faith efforts and expended substantial sums of money in an attempt to solve the problem. Mr. Burling expressed his opinion that the Agency should not have initially become involved in this dispute and

indicated that he believed the matter would have been satisfactorily resolved without the Agency's participation (R. 86-89). Mr. Joseph F. Mall, an Agency employee, testified that the Wards had been "very cooperative" in attempting to rectify matters and had exerted good faith efforts including the placement of "insulation put around the fan enclosure...a muffler installed with this fan and motor...a screen designed to cover the boxcar opening to prevent the particulate matter from escaping during the boxcar loading", etc. (R. 102-104). See: Joint Exhibits 4 and 6; R. 93-105. Mr. Phil McCleary, President of the King Feed Company, testified that now "the residents of the community are happy... the Wards are satisfied, they have given up their business at that site, and I don't feel at this time that a penalty to be imposed would serve any purpose". (R. 151). Mr. Lee Ward, the son of Mr. Everett L. Ward, testified as to the Company's good faith efforts to rectify all problems and indicated that they tried to cooperate with the Agency and solve the problems. (R. 109-131). Citizen's Statements by Mr. Charles Ulrich and Mr. and Mrs. Garett were introduced into evidence to show the disruptive effects of the WCS facility. (See: Citizen's Statements 1 and 2; R. 108).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. In reference to the penalty issue, the Board notes that the Agency has suggested a penalty of at least $3,500.00, while the Respondent has indicated that it believes that no penalty is warranted under the unique circumstances of this case.

The Board has carefully considered and evaluated all the testimony, exhibits, and citizen statements in this case. The Board has concluded that the neighboring residents were unduly disturbed in their enjoyment and use of their property by the activities of the Respondent's corncob operations, especially after the summer of 1981, and therefore concludes that a penalty is appropriate.

In reference to the proper amount of the penalty, the Board notes the existence of various mitigating factors: (1) the Respondent operated its facility to provide hauling and economic benefits to the railroad and for the convenience of the Quaker Oats Company in its Furfural production activities; (2) the good faith efforts of the Respondent to correct the problem, including various meetings with Agency personnel and substantial expenditures of time and money in installing specially designed equipment to minimize the disruptive influence of its activities; (3) the benefits to the neighboring farmers derived from the existence of the Respondent's facility; (4) the seasonal nature of the activities and sporadic nature of the disturbances; (5) the fact that this corncob facility is unique in nature whereby there is no established standard or technology which is generally accepted to govern the

operation of corncob blowers; and (6) the location of the facility was adjacent to the only railroad siding in Blandinsville, along with other businesses such as three grain elevators, a propane plant, a lumber yard, two fertilizer storage facilities, a construction company, a hog buying station, and an auto salvage operation.

Accordingly, the Board believes that a penalty of $1,000.00 is appropriate in light of the good faith efforts of the Respondent and the previously mentioned mitigating factors. The Board notes that the Respondent has indicated that it has no further intentions of conducting corncob operations at the site, and if there is a change of plans in the future, the Stipulation provides that the Respondent shall apply to the Board for a variance from the Order in this action; take all steps necessary to prevent any violations of the applicable regulations and the Act; and apply to the Agency for the requisite permits. (Stip. 11).

The Respondent is hereby found to have violated 35 Ill. Adm. Code 201.141, 35 Ill. Adm. Code 900.102, and Section 9(a) and 24 of the Act and will be ordered to cease and desist from further violations, comply with the terms and conditions of the proposed settlement agreement, and pay a penalty of $1,000.00.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, Ward Crop Service, Inc., has violated 35 Ill. Adm. Code 201.141, 35 Ill. Adm. Code 900.102, and Sections 9(a) and 24 of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist from further violations.

3. Within 45 days of the date of this Order, the Respondent shall by certified check or money order payable to the State of Illinois, pay a penalty of $1,000.00 which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2600 Churchill Road
Springfield, Illinois 62706

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on October 18, 1984, which is incorporated by reference as if fully set forth herein.

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 6th day of December, 1984 by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board