

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 1987

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 86-74  
 )  
E.J. BRACH & SONS, )  
 )  
Respondent. )

MS. SHEILA OWENS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

MR. WILLIAM GOOD APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon a three-count complaint filed on May 22, 1986 by the Illinois Environmental Protection Agency (Agency) against E.J. Brach & Sons (Brach), Respondent.

The Agency alleges in Count I of its complaint that Brach has not applied for or obtained air emission source operating permits for its printing equipment, thereby violating 35 Ill. Adm. Code 201.144 (Operating Permits for Existing Sources) and Section 9(b) of the Environmental Protection Act (Act). The Agency alleges in Count II that Brach has never applied for or obtained air emission source operating permits for its printing equipment, thereby violating 35 Ill. Adm. Code 201.143 (Operating Permits for New Sources) and Section 9(b) of the Act. Lastly, the Agency alleges in Count III that Brach has never applied for or obtained air emission source construction permits for its printing equipment, thereby violating 35 Ill. Adm. Code 201.142 (Construction Permit Required) and Section 9(b) of the Act. Brach filed an answer to the complaint on June 27, 1986.

Hearing was held on September 24, 1986 at which the parties presented a Stipulation and Proposal for Settlement for consideration by the Board.

Brach is a division of American Home Products Corporation, a Delaware Corporation, and is authorized to do business in Illinois. Brach is engaged in the business of manufacturing and packaging a variety of candies and is located at 4656 West Kinzie St., Chicago, Cook County, Illinois. (Stip. at 2).

The parties stipulated that Brach has on its premises four printing presses. One of these presses has been non-operational since 1978 and has been dismantled. The remaining three presses are operable and are utilized in Brach's business of candy manufacture and packaging and are the source of the instant complaint. (Stip at 2).

In the Stipulation and Proposal for Settlement, the Agency moves to voluntarily dismiss Counts II and III and stipulates that the three printing presses were purchased prior to April 14, 1972 and were, therefore, existing emission sources and permitting requirements for new sources were not applicable. The Agency's motion to dismiss is hereby granted.

As to the remaining Count, the parties stipulate that Brach has never applied for nor obtained air emission source operating permits for its three presses as required by Section 201.144 of the Board's air pollution regulations and by Section 9(b) of the Act, that Brach neither admits nor denies the violations of Section 201.144 or Section 9(b) of the Act and that Brach has applied to the Agency for the necessary operating permits for the three presses on or about August 25, 1986. (Stip. at 2-3).

The proposed settlement agreement provides that Brach cease and desist from further violations of the Act and Board regulations at its Cook County facility. In addition, Brach agrees to pay a penalty of \$5,000.00 to the Environmental Protection Trust Fund.

In evaluating this enforcement action and proposed settlement agreement, the Board has considered all the facts and circumstances of the complaint in light of the criteria set forth in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board will order Brach to cease and desist from further violations of the Act and Board regulations at its Cook County facility and order Brach to pay the stipulated amount of \$5,000.00 to the Environmental Protection Trust Fund.

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

#### ORDER

1. The Board hereby orders E.J. Brach & Sons to cease and desist from further violations of the Environmental Protection Act and Board regulations at its facility located at 4656 West Kinzie St., Chicago, Cook County Illinois.

2. Within thirty days of the date of this Order, E.J. Brach & Sons shall pay \$5,000.00 (five thousand) which shall be in the form of a certified check or money order payable to the State of

Illinois and designated for deposit into the Environmental Protection Trust Fund. Payment shall be sent to:

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

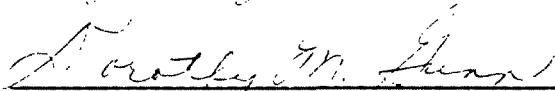
ATTN: Mary Jo Heise

3. E.J. Brach & Sons shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on September 24, 1986 which is attached hereto.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25<sup>th</sup> day of January, 1986 by a vote of 5-1.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board



unless the Illinois Pollution Control Board (hereinafter "Board") approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

#### STATEMENT OF FACTS

1. Complainant, Illinois Environmental Protection Agency (hereinafter "Agency" or "IEPA"), is an administrative agency established in the executive branch of the State government by Section 4 of the Illinois Environmental Protection Act (hereinafter "the Act") (Ill. Rev. Stat., ch. 111-1/2, par. 1001 et seq. (1983)), and charged, inter alia, with the duty of enforcing the Act, pursuant to Title 8 thereof.

2. Respondent, E. J. Brach & Sons ("Brach & Sons"), is a division of American Home Products Corporation, a Delaware corporation, authorized to do business in Illinois. Brach & Sons is located at 4656 West Kinzie Street, Chicago, Cook County, Illinois.

3. Brach & Sons is engaged in the business of manufacturing and packaging varieties of candies.

4. Brach & Sons has on its premises four printing presses. One said printing press has been non-operational since a date uncertain in 1978 and has been dismantled. The remaining three presses on the premises are operable and routinely utilized in conducting Respondent's business of candy manufacture and packaging.

5. Brach & Sons has neither applied for nor obtained air emission source operating premises for their printing equipment as required by Section 201.144 of the Air Pollution Regulations,

35 Ill. Adm. Code 201.144 and Ill. Rev. Stat., ch. 111-12, par. 1009(b) Sec. 9(b) (1986).

6. Brach & Sons neither admit nor deny the violation of Section 9(b) of the Act, Ill. Rev. Stat., ch. 111-1/2, par 1009(b) and 35 Ill. Adm. Code 201.144, the Pollution Control Board's Rules and Regulations as alleged in Count I of the Complaint.

7. Brach & Sons has applied to the Agency for the necessary operating permits for the above-noted printing presses on or about August 25, 1986.

8. The Agency hereby voluntarily dismisses Counts II and III of the Complaint as the three printing presses were purchases prior to April 14, 1972; the printing presses were therefore existing emission sources, 35 Ill. Adm. Code 201.102; construction permits were therefore not required, 35 Ill. Adm. Code 201.142.

9. Brach & Sons asserts the following:

A. The three aforementioned printing presses were purchased prior to April 14, 1972.

B. The three aforementioned printing presses are the only printing presses in operation at the facility. A fourth press, a champlain rotogravre press, was dismantled and has not been operating since 1978 and has been dismantled.

10. Respondent's candy manufacturing operation provides a useful social and economic service to the community as a whole by production of its product and employment of local residents.

11. All data and information sought by the Agency from Brach & Sons in the operating permit applications enables the

Agency to properly assess Brach & Son's compliance with the Environmental Protection Act.

12. The facility is located in an industrial area.

#### PROPOSAL FOR SETTLEMENT

As a result of settlement discussions between the parties and action taken by Respondent, the parties believe the public interest will be best served by resolution of this enforcement action under the terms and conditions provided herein. This proposal for settlement is expressly conditioned upon and effective only with approval thereof in all respects by the Board.

All statements contained herein are agreed to for purposes of settling this action only and shall be null and void and of no effect in any further proceeding or cause of action if the Board does not approve this proposal for settlement in its entirety.

#### TERMS OF SETTLEMENT

1. Brach & Sons agree to cease and desist from violations of the Illinois Environmental Protection Act and Rules and Regulations of the Pollution Control Board at its facility at 4656 South Kinzie Street, Chicago, Cook County, Illinois.

2. The parties enter into this Stipulation and Proposal for Settlement and Brach and Sons agrees to pay the penalty specified in this paragraph in order to avoid the substantial costs, inconvenience and uncertainties of further litigation. As

