

ILLINOIS POLLUTION CONTROL BOARD
September 5, 1985

VILLAGE OF ADDISON,)
)
Complainant,)
)
v.) PCB 84-161
)
L & S INDUSTRIES, INC.,)
)
Respondent.)

LOFTUS, DUFF & GARRITY, LTD. (MR. HUBERT J. LOFTUS AND PATRICK M. LOFTUS, OF COUNSEL) APPEARED ON BEHALF OF THE COMPLAINANT.

MR. LAWRENCE STEFAN, PRESIDENT OF L & S INDUSTRIES, INC., A NON-ATTORNEY APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon an October 31, 1984 Complaint filed by the Village of Addison (Village) which alleged that the Respondent, L & S Industries, Inc. (LSI), operated its electroplating and heat treating plant in such a manner as to cause odors and air pollution in violation of Section 9(a) of the Illinois Environmental Protection Act (Act) and noise pollution in violation of Section 24 of the Act. Additionally, the Village has stated that LSI dumped chemicals into the Village's sanitary sewer system and stored toxic materials in the backyard of the LSI site. Hearing was held on March 28, 1985 at which members of the public were present.

LSI operates an electroplating and heat treating facility at 920 National Avenue in Addison, Illinois which heat treats and zinc chromates various metal parts such as bolts, plates, screws, nuts, and fasteners for industrial use. Before the metal parts are placed in LSI's heat treating furnaces, they are washed with an alkaline soap to remove the oil which was originally put on the metal piece by the manufacturer. Because some parts are coated with heavier grease and oil which cannot be completely removed by washing, some smoke and odors are apparently generated when the parts are placed in LSI's heat treating furnaces. After the heat treatment, these parts are plated at one of the company's three zinc plating lines. LSI was required to cease the plating operation as of December 1, 1984, pursuant to a court order. (R. 108-110; R. 121; R. 149). LSI also generates a hazardous waste from its wastewater treatment operations, which is known as F-006 pursuant to 35 Ill. Adm. Code 721.131, and which is stored in three yard hoppers and 55-gallon drums. The LSI site is, therefore, classified by the Agency as a storage facility. (See: Village's Exhibits #5, 6 & 17).

LSI is located in an industrially zoned area known as the Addison Industrial Park which is adjacent to a residential neighborhood known as the Heritage Subdivision that is zoned for single-family and duplex dwellings. The Village of Addison's zoning ordinance has set up a 100 foot buffer zone between the the Heritage Subdivision and the Addison Industrial Park. (R. 171-188; and Respondent's Exhibit #1). Two overhead doors in the back of LSI building are allegedly opened on some days allowing noises from dumping treated screws, bolts, and metal parts into large metal bins and from the paging system to disturb residents of the Heritage Subdivision.

Before reaching the factual questions, the Board must determine what has been properly alleged by the Village. Noise and odor pollution are clearly alleged in the complaint as violation of Sections 9(a) and 24 of the Act. These are the only violations expressly alleged in the complaint. However, the complaint also states (under a heading concerning the manner and extent of violation) that "pollution is from high levels of Cyanide, Cadmium, Total Chromium and Zinc dumped into the Village sanitary system, spillage and open storage of hazardous wastes in undated, unlabeled deteriorated containers." Further, in its memorandum filed on May 23, 1985, the Village asserts that "L & S Industries admits they are presently violating E.P.A. regulations by its storage of toxic waste for over a four month period" and "admits that it has polluted Addison's sewer system through the dumping of chemicals." (Memo. pp. 3-4). However, nowhere in the record does the Village cite any Section of the Act or any Board rule which was violated regarding discharges to the sewer system or storage of toxic waste. Further, the sewer discharge problem has apparently been litigated in the circuit court. (Memo. pp. 2-3 and R. 107). The record is silent regarding any court action involving the toxic waste storage.

From the face of the complaint it is unclear whether any violation other than noise and odor is alleged; the discharge to the sewer and the waste storage could reasonably be read as causes of the alleged odor violation. Further, it is unclear what the Board's jurisdiction over the sewer discharge violation may be in light of the circuit court action. Finally, if the Village intended to include these allegations as part of its complaint, it could have amended the complaint to conform to the proof, but it did not do so. The Board, therefore, concludes that the only allegations properly at issue here are the noise and odor allegations.

Noise Pollution

The Village alleges that LSI violated Section 24 of the Act which prohibits any person from emitting "beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life..., so as to violate any regulation or standard adopted by the Board". In support of the alleged noise pollution violations, the Village entered into evidence noise survey tests

which were conducted by the Agency on the perimeter of LSI's property. The Village further presented testimony by several witnesses who live in the vicinity of LSI's plant.

The first noise test, conducted on June 7, 1978, indicated no violations of the numerical noise standards of 35 Ill. Adm. Code 901.102(a) or (b) which establish limitations for sound emitted to Class A (residential) land during the daytime and nighttime hours, respectively. (Village Ex. 6). An April 12, 1979, test, however, shows violations of Section 901.102(b) of 6-15 dB above 1000 Hertz and violations of Section 901.102(a) of 4-7 dB in the 4000 and 8000 Hertz octave bands when the heat treating and plating equipment was operating. (Village Ex. 7). An April 1, 1980, survey indicated violations of the daytime standards of 1 dB at 1000 Hertz and 4 dB at 2000 Hertz when the exhaust fan was operating and violations of nighttime standards of 2-15 dB above 250 Hertz. A May 19, 1982, survey shows daytime violations of 3-11 dB above 2000 Hertz and nighttime violations of 5-22 dB above 500 Hertz.

In addition, the Village presented the testimony of several area residents. Mrs. Betty Burrows indicated that when the overhead doors are fully open, loud noises from LSI disturbed her sleep and comfort, and that the facility has always been noisy. (R. 22-23). Mr. James Burrows, her husband, testified that when LSI opened in 1978 there was excessive noise from the dumping of screws and he suggested that the overhead doors be closed at 10:00 p.m. which LSI subsequently "did most of the time, not all the time." (R. 40). Mrs. Barbara Mariaz similarly testified that noise from LSI has disturbed her since 1978 and that it is "most annoying at night because it prevents us from sleeping, especially people who work are woken (sic) up by banging on the drums." (R. 54-70). Mrs. Christine Lesny, who has lived in the Heritage Subdivision for 13 years, testified in regard to various photographs she took from her home and backyard that showed LSI's facility with its doors opened and testified that, when the doors are open, she can hear the regular operating noise of machinery and "you can even hear the paging system" which disturbs residents during daytime and nighttime hours. (R. 71-78). Mrs. Pat Rataj, who lives "about four or five houses down" from LSI testified that, even with her windows closed, she and her family were greatly disturbed by noise from the open overhead doors and the truck deliveries to the company. (R. 84-88). Even when the company has closed its overhead doors, Mrs. Rataj stated that the noise, although diminished, was still highly disturbing. (R. 86-87). Although she complained to LSI on numerous occasions, "sometimes somebody gets on the phone that doesn't even understand English, and I have to yell and scream at him to please, please, close the doors." (R. 87). However, she noted that sometimes the overhead doors are eventually closed "if they understand what I am saying." (R. 91 and 92).

LSI presented some witnesses on its behalf. Mr. James B. Thomas, maintenance supervisor at LSI, testified that the company

has installed sound absorbing material and placed a rubber-like lining in the shakers; reduced the speed of some of the exhaust fans and placed electronic locks on the overhead doors so that no one can open them at night in an effort to eliminate complaints from neighboring residents. (R. 132-134). Mr. Thomas further stated the pounding noises at night probably come from a nearby company's operations, and that on two occasions when neighbors complained about noise, he was the only one in the plant and no noise was coming from the facility. (R. 135-139 and 147).

Mr. Roger Kwit, the LSI plant manager, stated that the Company tried to keep the back doors closed but sometimes employees opened them, and had, since the plating operations were eliminated, reduced about 70% of the noise from plant operations. (R. 148-156). Mr. Kwit also said that his name was on the top of the list that was distributed by the company along with his home phone number where he could be reached at night. Over the past year, he stated that he only received one telephone call at night and indicated that whenever he received any calls about the back doors being open, he closed these overhead doors right away. (R. 154).

Mr. Lawrence Stefan, the President of LSI, testified as follows:

I have sympathy for the people that live behind me, but I also have sympathy for myself with regard to the problems that you people have created for me. I think it is a city problem... We attempt to keep the doors closed. We put locks on the doors to keep them closed at night. Many times employees open the doors because it is hot, and if you people would call, we would close the doors. I apologize to all of you, if you call and you get somebody that is a little bit vulgar on the other end of the phone. People pick up the phone that shouldn't pick up the phone, but they do. With regard to the noise that emanates out of the back of the plant, I believe the EPA has come there many, many times, and these exhibits which I just mentioned a few moments ago, show that basically our company is not violating the noise ordinances of the State of Illinois if the doors are closed. (R. 189-191).

The exhibits referred to (Village's Exhibits 9-14) do not support Mr. Stefan's claim of basic compliance. Rather, those exhibits reinforce the testimony of the area residents that noise emanating from LSI causes interference with their sleep and normal leisure time activities. The Board finds this interference to be frequent and substantial, especially at night and especially when the overhead doors are open. While there is some reason to believe that the extent of interference has been reduced since the elimination of the plating operation, there is no indication that the interference has ended.

AIR POLLUTION

The Village also alleges a violation of Section 9(a) of the Act which proscribes air pollution, which in turn is defined in Section 3(b) of the Act, in relevant part, as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to unreasonably interfere with the enjoyment of life or property." The Village alleges that such unreasonable interference resulted from smoke and odor emissions from LSI's property.

At hearing various residents testified that their lives had been unreasonably disturbed and disrupted by excessive smoke and odors from the LSI's facility. Mrs. Burrows testified that she sometimes spotted heavy black smoke coming from the LSI's plant and that odors "like burning oil or rubber burning" would sometimes accompany the smoke. (R. 14-19). She testified that the fumes were powerful enough to irritate and burn her eyes and prevent her family from sitting in the backyard or opening the windows during those times that the smells and smoke would be present. (R. 20-21). She stated that the smoke started around September, 1984 and was heaviest around that period (R. 21-23) and that, although the smoke and odor problems are intermittent, they are severe enough to greatly disturb her.

Mrs. Mariaz testified that approximately 45% of the time there is smoke emitted from the LSI facility and that "when the doors are open, it seems the smoke comes out of the door" but "when the doors are shut, it comes out of the chimneys, through the vents" which LSI installed. (R. 66-67). Although stating that the smoke problems are secondary to the noise problems, Mrs. Mariaz pointed out that the smoke problem has become "worse within the last two years." She did, however, admit that the smoke she was speaking of could well be steam "because sometimes it is lighter and sometimes it is darker" and also admitted that the majority of the smoke complained of is from Tedio's operations which are next door to LSI's facility. (R. 67-68). On the other hand, Mrs. Lesny testified that photographs she had taken showed smoke emanating from the doors at LSI's facility. (R. 71-78 and Village Exhibits 4A and 4B). Mrs. Rataj complained of smoke billowing out of the plant's chimney and an odor "like a burning rubber smell" which interfered with the enjoyment of her home and property. (R. 96-101).

Mr. Thomas testified on behalf of LSI that absolutely no smoke emanates from the chimney on LSI's plant because of various process changes made about a year and a half ago to eliminate the smoke (R. 127-134). In fact, he stated that there is no chimney and that while white vapor is emitted from a cooling tower and is visible, especially at night and during cool weather, it is only water vapor and contains no odor. (R. 132-139). He believes that the smell may come from some other plant. (R. 133, 136). In addition, Mr. Kwit stated that the company ceased its plating

operations in the beginning of December, 1984, and that while LSI periodically let smoke out the back doors before that time whenever straight hardening was done, it subsequently eliminated the smoke by cutting its chemical usage of nitrogen and adding natural gas. (R. 149-153).

Mr. Stefan reiterated this view, stating that LSI modified its process, "and the smoke that was in the plant and came out of the plant is not there anymore. I think the smoke that you people see, or you think the smoke you have seen, comes off the cooling tower. It does not pollute." (R. 190). When asked why there is a discrepancy between his testimony that there was no odor coming from his plant and the testimony of Mr. and Mrs. Burrows along with their log delineating the times when odors were detected, Mr. Stefan indicated that he had detected such strong odors coming from the LSI facility. He elaborated that "there has been odors in the past, I wouldn't deny that. I don't believe there is (sic) odors coming from the plant now, and I think what you think is smoke is not smoke, but it is steam". (R. 204-205). Thus, Mr. Stefan has admitted past odor emissions, but contends that those emissions have ceased.

Based on all of the evidence noted above, the Board finds that odors from LSI's facility caused interference with the enjoyment of the life and property of nearby residents up to the time of process changes at the LSI facility eighteen months prior to hearing. There is no evidence to rebut the citizen testimony until that time. However, the Board cannot find that odors continued to interfere with area resident's enjoyment of life and property after that date. The Village has failed to prove that allegation by a preponderance of the evidence in that most of the references to odors are associated with smoke from a "chimney" that apparently is a cooling tower that emits no odors, and there is little or no proof of other significant odor emissions from the LSI facility.

SECTION 33(c) FACTORS

The Board may find interference with the enjoyment of life solely based on testimony describing the impacts of noise or odor. However, to evaluate whether those noise or odor impacts are "unreasonable," the Board must evaluate a series of factors listed in Section 33(c) of the Act:

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; and

4. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source.

The "unreasonableness" of the noise or odor pollution must be determined in reference to these statutory criteria. Wells Manufacturing Company v. Pollution Control Board, 73 Ill.2d 226, 383 N.E.2d 148 (1978); City of Monmouth v. Pollution Control Board, 57 Ill.2d 482, 313 N.E.2d 161 (1974).

The citizen testimony makes it clear that noise violations and odor violations prior to process changes caused significant and unreasonable interference with the health, general welfare and physical property of the area residents. Their ability to sleep has been impaired as has their ability to enjoy their properties, and such interference has persisted for several years.

Second, the Board is to consider the social and economic value of the pollution source. While it is clear that LSI's facility does have social and economic value to its owners, employees, and customers, LSI's method of operation is such that its social value is reduced by the pollution it causes and by its unreasonable interference with the rights of local residents to utilize and enjoy their homes and property.

Third, there is no question that the residents of the Heritage Subdivision have clear priority of location, as almost all of the complaining residents have lived in the area for many years before LSI commenced its operations in the area. One of the inherent problems involved here is that there exists a proximity between the industrial and residential zones which exacerbates any noise, smoke, odor, or hazardous waste storage problems that occur. While LSI's plant is in a location zoned for light industrial activity, it is expected to observe the environmental standards which are used to regulate such industrial properties.

Fourth, LSI has not contended that it is technically practicable and economically reasonable to reduce noise and odor emissions to meet Board standards.

Although LSI has claimed a willingness to correct the environmental problems and have taken various steps to rectify the situation, the fact remains that the problems have persisted over a long period of time. Mr. Stefan has indicated that he feels that the residents of the Heritage Subdivision have "hassled" him by excessively complaining. (R. 214-215). He has demonstrated a rather inflexible and noncooperative attitude in his dealings with the Agency. (R. 79-83; R. 119-120; R. 145-146; R. 169-170; R. 189-190; R. 192-193). The Board believes that such an attitude reflects an intransigency which requires

assurances that environmental violations will be corrected and necessitates a penalty to aid in the enforcement of the Act. In evaluating all the facts and circumstances of the instant case, and analyzing all testimony and exhibits presented at the hearing, the Board finds that a \$1,000 penalty is appropriate.

ADDITIONAL MATTERS

The record before the Board is presently inadequate for the Board to order any particular remedial actions. The last noise survey in the record is from May 19, 1982. LSI contends that operational changes since that time have significantly reduced the noise. While the record does contain sufficient evidence to conclude that noise violations continue, it does not contain sufficient information on the extent of present non-compliance nor does it offer any further specific actions which could be taken to assure compliance.

Therefore, the Board will order LSI to prepare a report evaluating, to the maximum extent possible, the type and degree of noise and odor reductions possible by changes in operation or construction of noise and odor reduction devices. This report should be prepared by a competent individual or firm, and should evaluate all methods of control (not just those already discussed). Each control option should include anticipated pollution reductions, cost of implementation and an estimate of a reasonable time for implementation.

The Board will retain jurisdiction in this case pending receipt of the report, and final disposition of this matter. The report is to be filed with the Board and the Village not later than December 1, 1985. Unless a motion requesting a hearing on the contents of the report is received by December 30, 1985, the Board will proceed to issue a final Order regarding compliance as soon as possible thereafter.

The Board also notes that it views with considerable concern the apparent violations of the hazardous waste storage rules. While the Board has decided that no violation could be found in this proceeding since that allegation was not properly pleaded, such conclusion in no way is intended to indicate that the Board condones such actions. Presuming that the admitted violation persists, the Board urges LSI to take immediate action to properly handle the wastes in order that the public health and welfare be protected and to avoid further potential liability.

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

ORDER

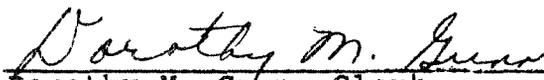
1. The Board finds that L & S Industries, Inc. has violated Sections 24 and 9 of the Environmental Protection Act.
2. Within 30 days of the date of this Order, LSI shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$1,000 which is to be sent to:

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

3. LSI is ordered to submit to the Board and Complainants, not later than December 1, 1985, a report on methods of reducing or eliminating noise and odor pollution at its facility consistent with the Opinion. Such report shall be prepared by a professional engineer or other qualified consultant in consultation with the Agency to conduct all necessary tests to see that all improper smoke, odors, and emissions are eliminated and to insure that the Respondent is in compliance with all applicable air pollution standards.
4. The Board will retain jurisdiction in this matter pending receipt of the report. Unless a motion for hearing on the contents of that report is received by December 30, 1985, the Board will proceed to issue a final Order in this matter.

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 5th day of September 1985 by vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board