

ILLINOIS POLLUTION CONTROL BOARD
January 4, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-118
)
KIRBY FOODS, INC.,)
a Delaware corporation,)
)
Respondent.)

MR. WILLIAM E. BLAKNEY & MR. JEFFREY S. HERDEN, ASSISTANT
ATTORNEYS GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

FRANKLIN, FLYNN AND PALMER, ATTORNEYS AT LAW (MR. LEONARD T. FLYNN,
OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the April 25, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). Count I of the Complaint alleged that, on each and every day of operation from August 9, 1973 through the date of filing of the Complaint, the Respondent operated its food market compressors so as to allow the emission of sound beyond the boundaries of its property. Count I of the Complaint also alleged that, on specified dates, the Respondent emitted sound in violation of Rule 202 of Chapter 8: Noise Regulations. Count II of the Complaint alleged that the sound emitted from the Respondent's facility unreasonably interfered with the enjoyment of life and with the lawful activities of neighboring residents, in violation of Rule 102 of Chapter 8: Noise Regulations and therefore in violation of Section 24 of the Illinois Environmental Protection Act ("Act"). After numerous preliminary motions were filed, hearings were held on August 31, 1978 and November 14, 1978. The parties filed a Stipulation and Proposal for Settlement on November 17, 1978.

Kirby Foods, Inc. ("Kirby Foods") operates a food market, which consists of a building and property, as well as equipment and inventory, located at 312 West Kirby Avenue, Champaign, County of Champaign, Illinois (the "facility"). The supermarket has operated at its present location since 1969. At the facility,

Kirby Foods, operates twelve (12) compressor units for the purpose of supplying refrigerated air for the cooling of walk-in cooler display cases, produce and other related units. These compressor units have been and are now located on the roof of the facility in what is called a "Rooftop Mechanical Center." The compressor units are capable of emitting sound beyond the boundaries of the facility property. (Stipulation, p. 2).

The food market is located in a mixed residential and commercial neighborhood. Since the facility first operated, there has been some increase in the commercial use of some surrounding properties. (See: Exhibit A which is incorporated into the Stipulation). Kirby Foods, Inc., employs approximately thirty-two (32) persons on a full-time basis and approximately thirty (30) persons on a part-time basis. The facility is in operation fifty-two (52) weeks per year, seven (7) days per week, twenty-four (24) hours per day. (Stipulation, p. 2).

It is stipulated by the parties that the facility constitutes a property-line-noise-source within the definition of Rule 101 of Chapter 8: Noise Regulations; that the land on which the facility is located constitutes Class B land within the definition of Rule 201(b) of the Board's Noise Regulations; and that the main source of the sound emitted from the facility was the compressor. (Stipulation, p. 3). It is also stipulated that on September 26, 1975, March 22, 1976, April 5, 1976, April 15, 1977, May 20, 1977, December 29, 1977, and May 24, 1978, Kirby Foods, Inc. caused or allowed the emission of sound from its facility to receiving Class A land in excess of the limitation imposed by Rule 202 of the Board's Noise Regulations, as shown by noise survey reports prepared by the Agency. (See: Exhibits B, C, D, E, F, G, and H which are incorporated into the Stipulation). Copies of each noise survey report with cover letter were provided Respondent subsequent to each noise survey. These emissions constituted violations of Rule 202 of the Board's Noise Regulations. (Stipulation, p. 3-4).

The parties have also agreed that Kirby Foods, Inc., on each and every day of operation from August, 1973 until July, 1978, operated its facility in such a way as to emit sound which unreasonably interfered with the enjoyment of life and with lawful activities of persons residing in proximity to the facility, thus causing noise pollution as defined in Rule 101 of the Board's Noise Regulations, and therefore in violation of Rule 102 of Chapter 8: Noise Regulations. (Stipulation, p. 4).

At the request of Respondent, Agency personnel conducted near field measurements of the sound emitted by Respondent's

compressors on October 29, 1976. (See Exhibit I). The near field measurements indicated that the air intake was the principal source of noise emissions. Agency personnel therefore suggested to the Respondent that a barrier type solution would achieve the required decibel reduction. Subsequent to February 18, 1977, but prior to March 18, 1977, and in accord with a compliance agreement which was fully executed by February 18, 1977, the Respondent installed acoustical lining to the compressor housing and baffles to deflect compressor exhaust sounds. Agency personnel inspected the facility and took measurements of noise emission on April 15, 1977. (See: Exhibit E). The results of this Noise Survey revealed that noise emissions from the facility still exceeded the limitations of Rule 202 of the Board's Noise Regulations. (Stipulation, p. 4-5).

During the period of April 15, 1977 through May of 1978, there occurred several discussions between the Respondent and Agency personnel concerning the noise emissions from the facility. However, no significant decrease in the sound levels of the noise emissions was accomplished by Respondent during this period, as indicated by noise survey reports of May 20, 1977, December 29, 1977, and May 24, 1978. (See: Exhibits F, G. and H). After the filing of the Complaint in this matter on April 25, 1978, but prior to July 11, 1978, the Respondent constructed a vertical "Billboard" type barrier which resulted in the lowering of the sound levels of the noise emissions from the facility to within the tolerable limits of Rule 202, thus achieving compliance with Rule 202, B-A Day-time limits. (See: Exhibits J and K).

It is stipulated by the parties that the facility performs services which are of social and economic value. As a business, Kirby Foods contributes to the tax bases of the State of Illinois, County of Champaign, and City of Champaign. Additionally, Kirby Foods provides full time employment for approximately 32 persons and part-time employment for about 30 individuals. (Stipulation, p. 5). The parties also agree that the Respondent has an obligation to comply with the Board's Noise Regulations so as to minimize the impact of its operations on neighboring residents. (Stipulation, p. 5).

The proposed settlement agreement provides that Kirby Foods, Inc., during the period between May 24, 1978 and July 11, 1978, completed the construction of a vertical barrier which successfully lowered the sound levels of noise emitted from its compressor units to within the tolerable limits of Rule 202, thus achieving compliance with Rule 202 of Chapter 8: Noise Regulations. The Respondent's success in achieving compliance therefore eliminates the need to formulate a future compliance program and schedule. (Stipulation, p. 6-7). However, as part of the

settlement agreement, Kirby Foods has promised to maintain the vertical barrier in proper condition so as to remain in compliance with Rule 202 of Chapter 8: Noise Regulations. (Stipulation, p. 7). Additionally, the parties have suggested that a stipulated penalty of \$750.00 is appropriate under the circumstances of this case.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). Accordingly, the Board accepts the Stipulation and Proposal for Settlement and finds that, on September 26, 1975, March 25, 1976, April 5, 1976, April 15, 1977, May 20, 1977, December 29, 1977 and May 24, 1978, Kirby Foods, Inc. caused or allowed the emission of sound from its facility to receiving Class A land in violation of Rule 202 of Chapter 8: Noise Regulations and that, on each and every day of operation from August, 1973 until July, 1978, Kirby Foods, Inc. operated its facility in such a way as to emit sound which unreasonably interfered with the enjoyment of life and with lawful activities of persons residing in proximity to the facility, thus causing noise pollution as defined in Rule 101 of the Board's Noise Regulations, and therefore in violation of Rule 102 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act. The Board imposes the stipulated penalty of \$750.00 .

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, Kirby Foods, Inc., has violated Rule 102 and Rule 202 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act.
2. Within 45 days of the date of this Order, the Respondent, Kirby Foods, Inc., shall pay the stipulated penalty of \$750.00 , payment to be made by certified check or money order to:

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

3. The Respondent, Kirby Foods, Inc., shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed November 17, 1978, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4th day of January, 1979 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board