

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-272  
 )  
 McCLURE QUARRIES, INC., )  
 )  
 Respondent. )

Mr. Steven Watt, Assistant Attorney General, appeared for complainant.

Mr. Burrel Barash appeared for respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

The Environmental Protection Agency (Agency) filed a complaint on July 16, 1975 against McClure Quarries, Inc. (Respondent). Respondent owns and operates a limestone quarry approximately one mile north of Tennessee, in McDonough County, Illinois. The complaint alleges that this quarry has been operating without a permit in violation of Rule 103(b)(2) of the Pollution Control Board's Air Pollution Control Regulations and Section 9(b) of the Illinois Environmental Protection Act, Ill. Rev. Stat. Ch. 111 1/2 §1009(b) (1973).

At the hearing a Joint Stipulation of Facts was presented. Respondent also presented testimony concerning potentially mitigating circumstances and the penalty upon which the parties could not agree. There was no citizen comment.

The agreed upon facts are as follows. Respondent owns and operates a limestone quarry. Equipment used at the quarry includes 1 primary crusher; 3 conveyor belts; rock screens; 1 hammermill and 1 lime screen. Respondent admits it has operated the quarry on business days since June 1, 1973, up to and including the date of the complaint without having an operating permit issued for the aforesaid equipment in violation of Section 9(b) of the Illinois Environmental Protection Act and Rule 103(b)(2) of the Air Pollution Control Regulations.

McClure Quarries, Inc. has applied for various operating permits for its equipment at least four times and all applications were rejected by the Agency. The first two applications

were filed in January and March of 1973. Both applications were rejected because of inadequate information. A May 5, 1975 application was also rejected because not enough information was provided. The July 24, 1975 application was rejected on the basis that Rule 203(b) of the Air Pollution Regulations might be violated in that the stated emission rate of particulate matter contained in the application was in excess of that allowed by Rule 203(b). Respondent claims a fifth application dated May 20, 1975 was sent to the Agency. The Agency has no record of this. A copy of the said application was introduced as exhibit A-9 (R.10, stipulation).

In August 1975 Respondent filed a variance petition. This petition was denied by the Board on October 30, 1975. On September 4, 1975 Respondent obtained a construction permit to install a dust suppression system which, when operational in mid-November 1975, should result in compliance with Rule 203(b) of the Air Regulations.

Respondent did have contact with the Johnson-March Corporation on June 11, 1973 concerning a proposal for controlling their emissions and received a statement thirteen months later concerning payment (Stipulation Ex. A-13, A-14). Mr. Dieke, General Manager of McClure Quarries, Inc. testified at the hearing that at that time the company "just couldn't pay for it." (R.23). The testimony at the hearing went into the financial problems of the Respondent at the time. Respondent had a \$60,000 debt with its bank accrued by buying out a partner in the company. In approximately May 1972 (R.16,17) Respondent became aware of a possible impending law suit. One of Respondent's partners had pledged the assets of the quarry for performance bonds for his own separate construction business. This was done without Respondent's knowledge. The partner's construction business had gone bankrupt. The action by Fidelity and Deposit Company of Maryland was not filed until September 17, 1973 (Stipulation). Alleged damages totalled \$430,639.08. The action was dismissed in December 1974. Mr. Dieke estimated that in January 1973 that the gross value of McClure Quarries, Inc. was approximately \$250,000 to \$275,000 (R.16). Mr Dieke also stated his banker was aware of the impending lawsuit and that he had no borrowing power (R.16,17).

The effective date of the regulations in question was June 1, 1973. Respondent was aware of the effective date (R.15) and did continue to run the quarry without a permit in violation of Rule 103(b)(2) for over two years.

A sixth application for a permit was filed with the Agency on November 25, 1975 and was pending on January 19, 1976. Pursuant to the settlement agreement Respondent agrees to discontinue all quarry activities at the site and properly close the site unless an appropriate operating permit has been obtained from the Agency within sixty days of a Board Order in this matter.

The parties were unable to agree on the amount of penalty if any to be assessed. Respondent feels that there should be no penalty in light of the financial problems referred to above. The Agency responds that the dust suppression system finally put in cost between \$5,000 and \$6,000 (R.38), and that the effective date of the regulations was January 1973 while the lawsuit was not filed until June 1973. At this time the business was worth approximately \$250,000. A variance petition filed by Respondent in August, 1975 and rejected by the Board on October 30, 1975 indicated a need for one year to install the system (R.39). Testimony by Mr. Dieke indicates the system was running later the same month (R.21). It is the Agency position that Respondent was making an ongoing effort to delay the installation of the system and that a penalty is in order.

The Board finds that Respondent in operating its quarry without a permit was in violation of Rule 103(b)(2) of the Air Pollution Control Regulations and Section 9(b) of the Environmental Protection Act. The Board also finds the terms of the compliance agreement acceptable.

To protect the integrity of the permit program the Board finds that a penalty is appropriate in this case. Respondent's business is not a large quarry. It has a maximum output of 125 tons of crushed rock per hour. The quarry is located in a rural area at least a mile from all residences (R.14). The Respondent employs thirteen (13) people (R.14). The possibility of a \$430,000 judgment against the Respondent and an outstanding debt of \$60,000 would have a chilling effect on credit or borrowing power. However it should be noted that the law suit against Respondent was dismissed in December 1974. Respondent continued to delay getting a permit after the most mitigating circumstance ceased to exist. In Section 2(b) of the Act it is stated that "It is the purpose of this Act . . . to assure that adverse effects upon the environment are fully considered and borne by those who cause them." Respondent should not profit from his own delay. For these reasons we shall order Respondent to pay a penalty of \$750 in addition to complying with the terms of the settlement agreement.

The Board realizes that the emissions of limestone dust composed largely of Calcite ( $\text{CaCO}_3$ , specific gravity 2.7) and Dolomite ( $\text{CaCO}_3 \cdot \text{MgCO}_3$ , specific gravity 2.9) in a rural area, would likely have little adverse effect on the environment or on most kinds of crop production. Because of the high specific gravity of the crushed stone only areas that are downwind and close to the quarry would be normally affected.

A limestone quarry in close proximity to its customers is a decided economic advantage providing a low cost source for the multiple uses of the products. The feasibility of compliance is obvious in the fact that Respondent had a system working in November 1975. Although the value of the facility to the community is high the apparent costs of compliance are not so great as to cause hardship. The settlement and penalty are acceptable under the Section 33(c) criteria.

This opinion constitutes the findings of fact and conclusions of law of the Board on this matter.


#### ORDER

It is the order of the Pollution Control Board that:

1. Respondent, McClure Quarries, Inc. has violated Rule 103(b)(2) of the Air Pollution Control Board Regulations and Section 9(b) of the Act.
2. Respondent, McClure Quarries, Inc. shall discontinue all quarry activities at the site in question or close such site unless an appropriate operating permit has been obtained from the Agency in accordance with Regulations. The permit will be obtained within sixty (60) days of this order.
3. Respondent McClure Quarries, Inc. shall pay a penalty of \$750 for violation of the Act. Payment shall be made by certified check or money order within 35 days of this order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, Hereby certify the above Opinion and Order were adopted on the 25<sup>th</sup> day of March, 1976 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board