ILLINOIS POLLUTION CONTROL BOARD
October 14, 1976

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 75-285
SAMUEL BINGHAM COMPANY, a Delaware corporation, Respondent.	)	

Mr. Larry B. Blackwood, Assistant Attorney General, appeared for Complainant
Mr. Harvey M. Sheldon, (Plunkett, Nisen, Elliott & Meyer), appeared for Respondent

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

This matter comes before the Board on the Amended Complaint filed October 10, 1975 by the Environmental Protection Agency charging that Respondent Samuel Bingham Company operated from June 1, 1973 until the date of the filing of the Amended Complaint its Blanket and Roll Preparation Departments without operating permits in violation of Rule 103(b)(2) of Chapter 2: Air Pollution Control Regulations and in further violation of Section 9(b) of the Environmental Protection Act. Hearings were held in this matter on November 26, 1975 and March 30, 1976. At the close of Complainant's case in chief Respondent filed a Motion to Dismiss which Motion the Board ruled on February 11, 1976 would be taken with the case. That Motion is hereby denied.

The Samuel Bingham Company manufactures rubber covered rollers, polyurethane covered rollers, gelatine covered rollers and lithographic blankets. These products are used primarily in the printing industry, but are also used in steel mills, textile mills, and general industrial uses wherever a rubber coated roller might be useful such as conveyor belts.

In the Roller Preparation Department steel cores are prepared by either salvaging the steel case from a used roller or starting with a new shaft and shot blasting either to clean and provide a proper surface for adhesions. If a used roller is used, the old rubber is removed by a process described by Respondent as burning

off and/or stripping mechanically. (Comp. Exh. #1, p. 7.) Respondent then continues in its description of the operation by stating that smoke from the induction burn-off station is captured by a wet scrubber. It is this induction heating machine and the emissions produced thereby with which Count II of the Complaint is concerned.

On July 12, 1973, Respondent filed an application with the Agency for an operating permit for its Roll Preparation Department. The Agency notified Respondent that the Agency considered the application inadequate because it did not contain a flow diagram, an Episode Action Plan, the process weight rate for the induction burn-off furnace (induction heating machine), or actual test data or calculation supporting emissions from the scrubber. (Comp. Exh. #2.)

On January 28, 1974 the Respondent again resubmitted its application for the Roll Preparation Department with the information which Respondent believed had been requested by the Agency. The Agency notified Respondent in a letter dated February 25, 1974, that this application was likewise considered inadequate because the Agency still desired actual test data or calculation showing that the scrubber efficiency is 93 percent at .1 micron particle size. Justification for the alleged inlet grain loading to the scrubber was also requested. Respondent's Vice President in charge of the permit application and the officer to whose attention the letter was sent testified that he was unaware of the existence of this letter prior to the filing of the Complaint in this matter (R. 160). It was never established at the hearing whose signature appeared on the postal receipt. (Comp. Exh. #3.)

No further correspondence regarding this permit occurred between the parties until February 27, 1975 when the Agency informed Respondent in an Official Legal Notice that no operating permit was in existence. Respondent was informed that unless satisfactory action was taken in response to the Notice, the Agency would immediately institute enforcement proceedings. (Resp. Exh. #14.)

After receipt of the Official Legal Notice of February 27, 1975, Respondent's Plant Engineer, contacted Complainant's Chicago Regional Manager and was advised that certain information requested by the Agency necessary to the processing of the permit application had not been received and that the Official Legal Notice had been issued as a result thereof. In reply to the Notice, which requested response within 14 days, Respondent's Plant Engineer on March 5, 1975 by letter (Resp. Exh. #5) advised the Agency that two of the three items of information allegedly missing had been in fact submitted to the Agency by certified mail on January 28, 1974, over a year before the Notice and that the third item would be submitted after Respondent had received a visit from an Agency field engineer who was to determine the ex-

tent of certain test data the Agency required. An internal memorandum of the Agency dated 4/11/75 (Resp. Exh. #3) acknowledges that the material had been furnished as requested and that Respondent should be asked to request the reopening of his prior permit applications. No such request was made of the Respondent; the record indicates no further correspondence by the Agency or any notification to Respondent that Respondent was required to request that the permit application be reopened before the Agency would take action to consider the permit application information submitted to them over a year previously.

Without notifying Respondent that any of its actions were considered to be unsatisfactory, the Agency filed this enforcement action on July 24, 1975. After the filing of this action Respondent continued its attempts to supply the Agency the requested information and provide the Agency with an understanding of the Roll Preparation operation. It should be noted that no additional pollution control equipment was required and that the operation is carried on today under an Agency permit in the same manner as when the application was first submitted.

On the basis of these facts the Board finds that Respondent operated its Roll Preparation Department without the required operating permit in violation of Rule 103(b)(2) and Section 9(b) of the Act. The Board rejects Respondent's argument that the permit was issued by operation of law on the theory that the Agency had all necessary information before it in February 1974 and therefore the application should not have been found to be inadequate at that time. The Board believes that the Agency letter of February 25, 1974 did ask for information and supporting data different from and in addition to that already supplied to the Agency in January of 1974. While it is certainly true that the application (Comp. Exh. #1, p. 30a) does provide a calculation purporting to provide the emission rate, this calculation is based on the premise that the scrubber is 92-93% efficient. The Board believes the Agency was correct in requesting Respondent to support this alleged efficiency by test data and the February 25, 1974 letter was intended to accomplish this goal.

The finding of a violation does not require that a penalty be assessed in every case, however, and the Board believes that to be the case with this particular permit violation. With the sole exception of the February 25, 1974 Agency letter, the Board finds that Respondent consistently responded to all Agency inquiries and letters. Respondent's failure to reply to the February 25, 1974 letter is inconsistent with its otherwise prompt responses to all other Agency correspondence, and for this reason the Board accepts Respondent's contention that the letter was never seen by responsible officers in the employ of Respondent. It has not gone unnoticed

that the original permit application was misleading in its description of the induction heating process and the Board believes that any lack of understanding that existed at the Agency was primarily the result of the description of the process as furnished by the Respondent. Thus, while Respondent certainly was not without fault in regards to the entire permitting process, Respondent nonetheless exhibited a willingness to cooperate with the Agency and did so consistently throughout this period. Respondent continued to cooperate with the Agency after the Official Legal Notice of February 27, 1975, and there is no evidence in the record supporting an opposite finding.

In consideration of the foregoing, the Board does not believe that any environmental goal would be furthered by the assessment of a penalty on Count I of this case.

Count II of the Complaint is concerned with the Blanket Department wherein a layer of cloth has a rubber coating applied with subsequent vulcanizing in a steam autoclave. Toluene was used during the time frame of the Complaint to pretreat the rubber stocks and was the reason for the permit difficulty in this department.

The application for an operating permit for this department was not obtained in July of 1973 because Respondent was unable to show compliance with Rule 205(f) of the Air Rules. On December 20, 1973, Respondent filed a Petition for Variance with the Board seeking relief from the application of Rule 205(f), (PCB 75-556). In their Recommendation in this matter, the Agency recommended the grant of the variance and stated that "all of Petitioner's applicable permits appear to be in order." (Ag. Rec. PCB 75-556.) This variance was granted by the Board and in November of 1974, Respondent sought an extension thereof. On February 14, 1975, the Board granted Respondent the requested variance extension conditioned on the fact that Respondent was to obtain all necessary construction and operating permits. (PCB 74-426, 15 PCB 507.) Respondent's officers testified that this condition was construed by them to mean that permits would be required if a hydrocarbon recovery system was installed (R. 172, 182, 183), and that they were unaware that this condition was intended to apply to the need for an operating permit for the Blanket Department. Simply stated, Respondent believed it did not need an operating permit for the Blanket Department while operating the department under the terms of a variance granted by the Board.

While Respondent's belief is in error, the Board does not believe any purpose would be served by assessing a penalty for this permit violation which the Board finds herein. With the exception of the general admonition in the Board Order in the variance extension, there is no evidence in the record that Respondent was

informed of the need for the operating permit after the variance was granted. While the Board finds a violation existed, the Board does not find a penalty appropriate. The Board does not perceive any reason why Respondent would file two successive variance petitions and yet not apply for an operating permit except to conclude, and the record supports this conclusion, that Respondent believed the variance grant eliminated the need for the permit.

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

ORDER

Respondent, Samuel Bingham Company, is found to have operated its Roll Preparation and Blanket Departments in violation of Operating Permit Requirements of Rule 103(b)(2) of the Air Rules and hence in further violation of Section 9(b) of the Act. Respondent now has operating permits for these departments and shall operate these departments in accordance with all permit conditions.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14th day of October, 1976 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board