

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-24
)
)
 ALTON BOX BOARD COMPANY,)
)
 Respondent.)

Mr. Robert N. Reiland, Assistant Attorney General of the State of Illinois, appeared on behalf of the Complainant;
Mr. Karl K. Hoagland, Jr., (Hoaglund, Maucker, Bernard & Almeter), appeared on behalf of Respondent.

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

This matter comes before the Board upon a Complaint by the Illinois Environmental Protection Agency (Agency) filed January 22, 1976 against the Alton Box Board Company (Alton) alleging violation of certain parts of Chapter 2, Illinois Pollution Control Board Air Pollution Control Regulations (Regulations) at Alton's paper mill located in the City of Alton, Madison County, Illinois. Hearings were held in this matter on July 26 and 27, 1976.

Before considering the merits in this case, the Board must dispose of certain procedural matters. At the hearing Alton moved to incorporate the record of Environmental Protection Agency v. Alton, PCB 73-61, into the case at hand. The Agency conceded that the final Board Order in PCB 73-61 was relevant and material but objected to the incorporation of the record in the case as immaterial and irrelevant to the instant matter. PCB 73-61 was resolved by means of a stipulation and agreement between the Agency, Alton Box Board, and LaClede Steel Company. The Board finds that a stipulated agreement is not a proper source of background material that would aid the Board in the determination of this case. The Board will, therefore, overrule the decision of the Hearing

Officer concerning the incorporation of the record in PCB 73-61, but will take official notice of the final Order of the Board and the Board's Opinion therein dated July 18, 1974 and August 29, 1974 respectively. With respect to the Agency's objections to acceptance by the Hearing Officer of testimony and exhibits allegedly outside the scope of the instant complaint, the Board will accept the evidence and exhibits produced for whatever value they may have in mitigation of the alleged violations.

Alton owns and operates a paper mill and associated facilities in the City of Alton, Madison County, Illinois on the Mississippi River immediately below Alton Lock and Dam No. 26. At this facility Alton has nine boilers used to provide processed steam for its paper making operations. Boilers numbered 1-7 are considered existing emission sources as defined by Rule 101 of Chapter 2 of the Regulations, with boilers 8 and 9 considered new emission sources as they were to be completed in late 1975. The Agency alleges that, under Rule 102 of Chapter 2 of the Regulations, Alton was required to have operating permits for boilers 1-7 and the pollution control equipment on boilers 6 and 7 by June 1, 1973. Operating permits have never been issued for boilers 1-4 and permits issued for boilers 5, 6, and 7 expired August 30, 1975. The Agency alleges that since September 1, 1975, Alton has continuously operated boilers 6 and 7 without an appropriate operating permit in violation of Section 9(b) of the Environmental Protection Act (Act) and Rule 103(b)(2) of the Regulations. In addition, the Agency alleges that Boiler No. 5, which is kept on warm stand-by, has been operated without an appropriate permit in violation of the same sections of the Act and Regulations and that the pollution control equipment on boilers 6 and 7 has also been operated without a valid permit in violation of the aforesaid sections of the Act and Regulations.

Although the complaint indicates that this case is concerned only with the alleged operation of equipment without the proper permit, the record herein delves into such extraneous matters as proposed regulations now before the Board and alleged promises made by Alton in order to procure prior operating permits. Although some of this information is useful in mitigation, the Board will consider only that evidence that pertains to the alleged violations contained in the Agency's Amended Complaint filed August 5, 1976.

Both parties agree that boilers 1 and 4 have never been considered in a permit application. Upon review of the Board Order in PCB 76-61, dated July 18, 1974, it is clear that neither party contemplated the issuance of a permit for either boiler No. 1 or boiler No. 4. That prior Board Order envisioned boilers 1 and 4 as emergency equipment to be used only in the event that boilers 5, 6, and 7 were unable to operate at the required level and only until two new boilers, Nos. 8 and 9 were put on line. Although much evidence

was presented concerning the actual number of hours of operation of boilers No. 1 and 4, the question of whether or not Alton violated a prior Board Order is not before the Board at this time. The Board finds that Alton could reasonably rely upon the prior Board Order which anticipated the operation of boilers 1 and 4 only on emergency basis and without an operating permit. The Board therefore dismisses the Complaint with respect to boilers 1 and 4.

It is clear from the record and Alton's answers to interrogatories that operating permits for boilers 5, 6, and 7 and pollution control equipment on 6 and 7 expired on August 30, 1975 (R.28,29, Alton's answer to Interrogatories, dated July 23, 1976). Although application for permits for these units has been pending since the expiration of the original permits, no permit had been issued by the Agency. Alton has never appealed any Agency permit denial (R.26), nor does Alton possess any variance from the Board concerning the subject equipment. The Board, therefore, finds that Alton was in violation of Section 9(b) of the Act and Rule 103(b)(2) of Chapter 2 of the Regulations from September 1, 1975 to March 4, 1976 in that it did not possess Agency-issued operating permits for boilers 5, 6 and 7 and for the pollution control equipment associated with boilers 6 and 7.

In fashioning a remedy, the Board must consider the factors enumerated in Section 33(c) of the Act. With a payroll between 11 and 15 million dollars per year and an employment level of 730 people, Alton has considerable social and economic value to the surrounding area (R.33). In addition, there is no reason to believe that the location of the source within the area is inappropriate. On the other hand, there is also no question but that it is both technically practical and economically reasonable for Alton to have come into compliance with the Regulations such that an operating permit could have been issued. If Alton felt, as was indicated in its final brief, that it was wrongfully denied an operating permit, the appropriate course of action would have been a permit appeal before this Board. If the company had any question concerning its ability to control its emissions, then a petition for variance before the Board would have been appropriate.

The permit program is the means by which the State of Illinois monitors and controls the emission of pollutants into the environment. The furtherance of this program is critical to the restoration, protection, and enhancement of the quality of the environment of the State of Illinois and it is, therefore, incumbent upon the Board to promote the permit program by whatever means are available. In this case Alton, after having filed a timely permit application, neither

received a permit, nor objected to a permit denial, nor sought a variance from whatever conditions they were unable to meet. The net result of Alton's action was a failure of the permit program with respect to its installation. The Board, therefore, finds that a penalty of \$1,000.00 is necessary to promote compliance with the permit program by Alton and others.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Alton Box Board was in violation of Section 9(b) of the Environmental Protection Act and Rule 103(b)(2) of Chapter 2 of the Board's Regulations from September 1, 1975 to March 4, 1976 in that it operated boilers 5, 6, and 7 and pollution control equipment associated with boilers 6 and 7 at its Alton, Illinois installation without an operating permit issued by the Illinois Environmental Protection Agency.
2. The Complaint with respect to boilers No. 1 and 4 is hereby dismissed.
3. For the violations noted above Alton shall pay a penalty of \$1,000.00 said payment to be made by certified check or money order payable to the State of Illinois, Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
4. Within 120 days of the date of this Order Alton shall obtain the necessary operating permits or receive Agency approval of an acceptable compliance program for boilers 5, 6, and 7 and the pollution control equipment associated with boilers 6 and 7.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of January, 1977 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board