

ILLINOIS POLLUTION CONTROL BOARD  
September 15, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-123  
 )  
 )  
 INFRA-RED FOODS CORPORATION, )  
 )  
 Respondent. )

The Honorable William J. Scott, Attorney General, by Ms. Helga Huber and Mr. Jeffrey Herden, appeared on behalf of Complainant Mr. Donald Novotny appeared on behalf of Respondent

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

This matter comes before the Pollution Control Board (Board) upon the Complaint filed by the Environmental Protection Agency (Agency) on March 19, 1975, charging Infra-Red Foods Corporation (Infra-Red) with violation of Rules 102 and 202 of the Noise Pollution Regulations (Chapter 8) and Section 24 of the Act. A hearing was held on June 16, 1976, in Chicago, Illinois. At the hearing, the parties submitted a Stipulation of Facts (Stipulation). No citizen witnesses were present.

Two preliminary matters require resolution. At the hearing, the Agency withdrew Count II of the complaint. Count II, which alleged violation of Rule 102, is hereby dismissed. Also, at the hearing the Hearing Officer denied a motion by Respondent to admit a noise survey conducted by Industrial Noise Surveys, Incorporated. The Hearing Officer, at the conclusion of the hearing, certified his ruling on admissibility to the Board for review. The Board hereby overrules the ruling of the Hearing Officer and admits Respondent's Exhibit 1.

Infra-Red owns and operates a frozen food processing plant in Oak Park, Cook County, Illinois. The plant in question constitutes a Class C use within the meaning of Rule 201 of Chapter 8. The plant incorporates a refrigeration system which utilizes compressors, evaporators, pump lines, and associated machinery.

The alleged sources of noise are a compressor, a number of evaporators, pumps, lines and associated machinery. The compressor is located in a room on the north side of the plant and the evaporator unit is located on the roof. The evaporator coils are cooled by air being blown over them from three horizontal fans driven by a 5-horsepower motor. The compressor room also houses two additional evaporator units which are operated daily. Four openings in the compressor room allow ventilation of the equipment.

The Agency's Complaint alleged that on January 8, 1975, during daytime hours, Respondent caused or allowed the emission of sound beyond the boundaries of its property, Class C land, to receiving residential property, Class A use, which exceeded the daytime limits prescribed in Rule 202 of Chapter 8. An Agency Noise Survey taken at an apartment across an alley from the plant revealed the following results:

<u>Octave Band Center Frequency (Hertz)</u>	<u>Octave Band Sound Pressure Levels (dB) (Infra-Red Plant)</u>	<u>Octave Band Sound Pressure Levels (dB) (Rule 202)</u>
31.5	60.5	75
63	62	74
125	64	69
250	61	64
500	59.5	58
1000	54.5	52
2000	51	47
4000	46	43
8000	39.5	40

Attached to the Stipulation of Facts submitted by the parties are several Noise Survey Reports prepared by the Agency. The parties stipulate that the reports show measurement of sound received by the near-by apartment building in excess of the Board's Regulations. Specifically, the reports dated November 11, 1974, May 27, 1974, January 8, 1975, and April 25, 1975, show excursions over the limits set by Rule 202.

The Agency recommended to Infra-Red certain remedial actions, outlined in the Stipulation, aimed at reduced noise emissions from the plant. The Stipulation indicates that by July 24, 1975, Infra-Red had implemented the Agency's suggestions and had taken several additional steps toward improving the situation. The Agency stipulates, and a July 24, 1975, Noise Survey Report confirms that the actions taken by Infra-Red have significantly reduced the noise emissions from its plant. The Board notes, however, that this improvement did not occur until after the Agency filed its Complaint in this matter and that Respondent was first made aware of the problem about April 1, 1974 (R.55).

The Board finds that Infra-Red has violated Rule 202 of Chapter 8 and Section 24 of the Act. In fashioning a remedy, the Board must consider the factors outlined in Section 33(c) of the Act: 1) the degree of injury to the public; 2) the social and economic value of the pollution source; 3) the suitability of the source to its location; and 4) the technical practicability and economic reasonableness of reducing the emissions. The injury to the public in this matter is evidenced by noise complaints received by the Agency from the manager and tenants of an apartment building across the alley from Infra-Red (see Stipulation, p.5). The manager stated that the loud machine noise emanating from Infra-Red was constant, that even with all the windows closed, the noise was not tolerable, and the noise interfered with the sleep of tenants facing the plant. Furthermore, at the hearing the Agency introduced a document published by the U.S. Environmental Protection Agency, entitled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare." (R.13). Based upon this document, the Agency concluded that, although the level of noise emitted by Infra-Red would cause no hearing loss to the residents of the apartment building, it would interfere with indoor activities. As to the economic and social value of the plant, the Stipulation indicates that Infra-Red, which has been at its present location since 1936, employs about 35 people and last year had gross receipts of 1.9 million dollars.

Infra-Red is located in an area which is comprised of a combination of residences, which are mainly apartment buildings, and commercial facilities. Testimony at the hearing indicated that the block on which the plant is located is a main thoroughfare, often traveled by heavy trucks adding to the ambient noise levels (R.28). The Infra-Red plant was built prior to the construction of the apartments from which noise complaints were received by the Agency. For the first few years after the apartments were built tenants were

not bothered by the noise. However, after additional equipment was installed, around December, 1973, it was alleged that the noise became excessive.

The improvements Infra-Red made, as stipulated to by the Agency, indicate that reducing its noise emissions was technically practicable and economically reasonable. The improvements were made at a cost of \$3,800.00 (R.50).

The Board finds that a penalty is appropriate for the violation of Rule 202 and Section 24 of the Act found herein. Infra-Red's noise emissions have seriously disturbed tenants in the apartment building across the alley from the plant. Although reducing its emissions was technically and economically reasonable and Infra-Red was aware of the problem since at least April, 1974, Infra-Red did not reduce its emissions to the level required by the Board's Rules until after the complaint in this matter was filed. The Board, therefore, assesses a penalty of \$2,000.00 for the violations found herein.

This Opinion represents 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) Infra-Red Foods Corporation is found to have violated Rule 202 of Chapter 8: Noise Pollution Regulations and Section 24 of the Environmental Protection Act.
- 2) For said violations, Infra-Red shall pay a penalty of \$2,000.00. Payment shall be made by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 45 days of the date of this Order.
- 3) Infra-Red shall cease and desist from further violations of Rule 202 and Section 24 of the Act.

4) Count II of the Complaint is hereby dismissed.

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 15<sup>th</sup> day of September 1976 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board