ILLINOIS POLLUTION CONTROL BOARD
June 15, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#72-217
v.	)	
	)	
PARK MANUFACTURING COMPANY	)	

RICHARD M. BANER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
THOMAS M. McMAHON and THOMAS M. RUSSELL, OF SIDLEY & AUSTIN, APPEARED ON BEHALF OF PARK MANUFACTURING COMPANY

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against Park Manufacturing Company, located in Grant Park, Kankakee County, alleging that Respondent, in the operation of its plant, emitted odors causing air pollution, in violation of Section 9(a) of the Environmental Protection Act, and burned refuse in the open, violating Section 9(c) of the Act and Rule 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution. The violations are alleged to have occurred between July 1, 1970 and the filing of the complaint, May 22, 1972.

Notwithstanding the length of the transcript, the facts and issues of the case are relatively simple. Respondent's operation is conducted in two plants; a plastic plant located on the east side of Main Street and the Eastern Illinois Railroad, and the box plant, located on the west side of Main Street. The box plant operation is the principal source of the complaints charged in this proceeding. The open burning allegations are the easiest to dispose of. Experiencing difficulty in obtaining the requisite permits for the operation of an incinerator to dispose of its paint filter, Respondent utilized a "burning box". This burning was observed by an Environmental Protection Agency employee on August 10, 1971 and the photograph taken (Ex. 1), (R. 394). In addition, Respondent acknowledges that this method was resorted to on other occasions (R. 286,403). Alleged justification for this admitted violation of the law is that the filters burned were subject to spontaneous combustion and failure to make immediate disposal would create danger of fires and resulting loss of property.

While we are not unsympathetic to this contention, we do not believe the Respondent is justified in ignoring the law when means of remedy are available to it. This Board has granted many variances

to enable the open burning of explosive waste when no alternative means appeared satisfactory. See Olin Corporation v. Environmental Protection Agency, #71-371 (February 17, 1972), 3 PCB 667; Olin Corporation v. Environmental Protection Agency, #72-281 (September 26, 1972) 5 PCB 507. This method was available to Respondent and should have been resorted to if the need for variance from the open burning requirements was as urgent as Respondent suggests. We assess a penalty in the amount of $500 for the open burning violations aforesaid.

The allegations with respect to air pollution resulting from the odorous emissions of Respondent's box facility, present a more difficult question for resolution. Respondent's box painting operation embraces four facilities, a wet booth using a water curtain, electrostatic painting employing mechanical filters, dipping and baking. Emissions from all of these operations are exhausted through roof vents by the use of fans and no abatement equipment is employed other than that mentioned. As we have held in other cases involving allegations of air pollution resulting from odor emissions, the determination of this question is one of subjective impact and not objective measurement. See Mystik Tape, a Division of Borden Inc., a New Jersey Corporation v. Environmental Protection Agency, #72-180 (January 16, 1973) PCB ; Environmental Protection Agency v. Midwest Rubber Reclaiming Co., #72-318 (March 18, 1973) PCB ; Environmental Protection Agency v. Ashland Chemical Company, et al, #72-188 (April 12, 1973) PCB

We have previously held that odor emissions constitute contaminants which if, of a sufficient intensity to cause interference with the enjoyment of life, result in air pollution as defined in the statute. Where the facility in question represents a significant element in the community's economic well-being, we have found an understandable tendency on the part of the citizens to tolerate odors that otherwise might be obnoxious and have serious nuisance attributes. The present case is an excellent example. Here we have the testimony of the Bangemann family, representing three generations, all testifying to the impact of the Respondent's emissions upon their health and well-being. Dennis Bangemann testified that the Respondent's operation produced odors and a burning sensation in his lungs during the periods of his visits since July, 1970 (R. 89). Mercia Fiore, a daughter, testified that the strong paint odor burned her lungs and made her eyes sore during the same period. She testified that the odor emissions precluded the use of the family yard. Erwin Bangamann (R. 36) testified that the emissions occur every time painting takes place in the plant. His home is located approximately 100 feet north of the box plant and the odors are particularly prevalent when the wind blows from the south. He complains of a sore throat, burning eyes, tearing, and the inability to sleep. He testified that other members of the family experienced the same sensations. He further testified that he had

observed visual emissions from the vent stacks on the top of the box plant during the times when the odors were particularly prevalent during the years 1970, 1971 and 1972 (R. 173). The fumes were described as being comparable to ammonia or lacquer (R. 177).

Vivian Lamore (R. 195), whose home is across the alley and slightly south of the box plant, testified that the odor emissions from the plant caused her to vomit (R. 204) and interfered with the use of her yard during the period of the alleged complaints. Witnesses introduced by Respondent understandably acknowledged that odors emanated from Respondent's box plant but differed with respect to the subjective impact on them and their families and their capability of conducting business or enjoying outdoor activities. Most indicated that while they were aware of the odor, it did not represent a nuisance or interference with their enjoyment of life.

On the state of the record, we can accept as truthful the statements of all witnesses. It should be noticed that the Bangemann home is the closest to the box plant. The impact on this property would, of necessity, be greater than on those remote from the plant. Even the difference of a block or two could make a significant difference in the ability to discern the odors and their subjective impact. Witnesses who use the bank and the post office immediately south of the box plant observe that the odors were particularly prevalent in these locations.

The case presents difficulties frequently encountered in endeavoring to resolve an odor emission nuisance complaint. The law does not require that in order for an odor nuisance to be established, everyone in the community must suffer. It is also obvious that where the economy and well-being of a municipality is at least, in part, dependent on the continuing operation of a particular facility, those whose livelihoods are dependent on or affected by the operation would possess a higher degree of tolerance toward the odor impact than those who might not have the same attitude toward the industry involved. Again, irrespective of feelings toward the alleged offender, those who are the closest physically, will suffer the most.

We believe the record is sufficient to sustain the Agency's position that the emissions from Respondent's plant have caused air pollution in violation of Section 9(a) of the Act. The testimony of the Bangemann family, particularly with respect to the impact of the odor emissions on their health and comfort, is significant and unrebutted. The case is all the easier to decide because of the lack of any abatement equipment used by the Company to minimize or eliminate the odors generated, nor has Respondent placed the capability of abatement in issue. On the contrary, it has resisted the Agency's efforts to demonstrate that odors of the character present in the instant case could be abated by available

technology. Cf. C. M. Ford v. Environmental Protection Agency, App. Court, 2rd District, #72-60.

For violation of Sec. 9(a) of the Act by causing air pollution, we will assess a relatively modest penalty in the amount of $1000 and direct that Respondent, within six months from the date of this Order, abate its odor emissions to the extent that they constitute a violation of Section 9(a) in the causing of air pollution.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of $1,500 is assessed against Park Manufacturing Company, of which $500 is assessed for violation of the prohibition against open burning set forth in Section 9(c) of the Environmental Protection Act and Rule 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution, as found in this Opinion and Order, and of which $1000 is assessed for the emission of odors causing air pollution, in violation of Section 9(a) of the Act between July 1, 1970 and May 22, 1972, the date of the filing of the original complaint herein. Penalty payment shall be made by certified check or money order payable to the State of Illinois, within 30 days from the date of this Order and sent to: Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. Within six months from the date hereof, Respondent shall cease and desist the emission of paint odors from its box manufacturing facility so as to cause air pollution as found herein. An abatement program shall be submitted to the Agency within 90 days from the date hereof setting forth the procedures to be employed to achieve this result.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 15th day of June, 1973, by a vote of 3 to 0.

Christan L. Moffett