

ILLINOIS POLLUTION CONTROL BOARD
March 8, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-469
 v.)
)
 PROLER STEEL CORPORATION)

GEORGE D. KARCAZES, SPECIAL ASST. ATTORNEY GENERAL, ON BEHALF OF
ENVIRONMENTAL PROTECTION AGENCY.
THOMAS J. REGAN OF POPE, BALLARD, SHEPARD & FOWLE, ON BEHALF OF
RESPONDENT

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

Complaint was filed by the Environmental Protection Agency against Proler Steel Corporation, alleging that between November 17, 1971 and June 22, 1972, the Company operated its facilities in such a manner so as to cause air pollution either alone or in combination with contaminants from other sources, in violation of Section 9(a) of the Act. Violation of Rule 203 of the new Air Pollution Rules adopted by the Board was alleged but withdrawn at the time of the hearing. (R. 4). Respondent's plant is located in Chicago, Illinois.

The plant processes incinerator residue and metal scrap residue from tin can manufacturing operations, shredding and cleaning it so that it can resold. (R. 67). A gas-fired rotary kiln is utilized in the manufacturing process, coupled with a wet scrubber, to minimize particulate emission but which does not provide complete abatement and particulate emissions were observed, together with the vapor emitted. Non-uniformity of raw materials, combined with periods of low water pressure are attributed as reasons for the occasional ineffectiveness of the abatement equipment (R. 74-75).

The testimony of the Agency was principally that of an Agency inspector who testified to having made visual observations of haze or particulate matter being emitted from the scrubber stack, serving the rotary dryer. Photographs were taken on various occasions and the foregoing observations were noted specifically on November 16, 17 and 19, 1971 (R. 12-21). Odors were also noted on these occasions. The Agency witness refers to conversations held with residents in the neighborhood, but the nature of these conversations is not evident from the record nor does it appear that any resident testified at the hearing. There is no question that particulate emissions have occurred on several occasions as a consequence of malfunctioning of the abatement equipment, although the intensity and degree is not a matter of record. This fact alone does not establish the causing of

air pollution as defined in the Act nor enable the conclusion that Section 9(a) has been violated.

Air pollution is defined in the Act as:

"The presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

The mere visual observation of haze or the detecting of odors is not sufficient to establish the characteristics and duration of emissions to the extent necessary to find them to be injurious to human, plant or animal life, to health or property, or to unreasonably interfere with the enjoyment of life or property. We do not know what impact, if any, the emissions from Respondent's plant has made on the neighboring businesses or residences. We do not know in what way, if any, the enjoyment of life by persons living in the area has been interfered with as a consequence of Respondent's operation. On the state of the record, we are constrained to hold that the Agency has failed to establish its case and the complaint against Respondent is accordingly dismissed. Cf. Environmental Protection Agency v. James McHugh Construction Co., et al, #71-291 4 PCB 511 (May 17, 1972).

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

IT IS THE ORDER of the Pollution Control Board that the Environmental Protection Agency has failed to establish a violation of Section 9(a) of the Environmental Protection Act by Respondent, Proler Steel Corporation, as asserted in its complaint. The complaint is, accordingly, dismissed against Respondent, Proler Steel Corporation, and Respondent discharged.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 8th day of March, 1973, by a vote of 3 to 0.

Christan L. Moffett