ILLINOIS POLLUTION CONTROL BOARD
June 28, 1973

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Complainant-Respondent	)	
	)	#71-4
REVEREND LOUIS HEMMERICH, et al,	)	#71-33
	)	#72-85
Complainant-Respondent	)	
	)	
v.	)	
	)	
LLOYD A. FRY ROOFING COMPANY, a Delaware corporation,	)	
	)	
Respondent-Petitioner	)	

JAMES RUBIN, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
BURTON Y. WEITZENFLED OF ARNSTEIN, GLUCK, WEITZENFELD & MINOW, ON BEHALF OF LLOYD A. FRY ROOFING COMPANY
PATRICK A. KEENAN OF DEPAUL LAW CLINIC, ON BEHALF OF REVEREND LOUIS HEMMERICH, et al

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

On October 14, 1971, in consolidated cases #71-4 and #71-33, we entered the following order:

"1. That Lloyd A. Fry Roofing Company cease and desist emissions from its Summit operation until such time as air pollution abatement equipment has been installed and is properly operating, which equipment shall bring Fry's emissions within the particulate regulations, as set forth in the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.11 and 3-3.111.

2. Fry shall advise this Board when such installation has been completed. This proceeding shall remain open and the Board shall conduct a further hearing not less than 30 nor more than 60 days after notice of the installation of said air pollution abatement equipment in order to ascertain whether odors being emitted by Fry's operation have been abated as a consequence of the air pollution control equipment installed. Such further orders shall be issued by this Board as are appropriate in consideration of the hearings.

3. Penalty in the amount of $50,000 is assessed against Fry for violations of the particulate emissions provisions of the Rules and Regulations Governing the Control of Air Pollution, for failure to file a Letter of Intent and Air Contaminant Emission Reduction Program as required by the Rules and Regulations Governing the Control of Air Pollution, Sections 2-2.3 and 2-2.4, and for causing air pollution as defined within the Environmental Protection Act, Section 9(a)."

On March 6, 1972, in Case #72-85, the Environmental Protection Agency filed a complaint alleging that Fry had made installation of, and operated, certain equipment designed to prevent air pollution without the requisite permits, thereby violating Section 9(b) of the Act.

The only issues with which the Board is presently confronted relate to whether Fry's operation is presently in compliance with our October 14, 1971 Order, and secondly, whether Fry has violated Section 9(b) of the Act by failing to obtain the necessary installation and operating permits.

A series of hearings was conducted on both of the foregoing issues subsequent to our October 14, 1971 Order. The parties have filed various memoranda with the Board, and counsel for the parties appeared to discuss the pending issues remaining to be resolved. Notwithstanding the length and complexity of the various proceedings filed herein, the disposition of the case at the present time does not present any difficulty. Counsel for the Environmental Protection Agency states that the receipt of an operating permit by Fry on December 26, 1972 moots any remaining issues with respect to the Board's original order above set forth and we so find. We concur that the issuance of an operating permit by the Agency connotes compliance with our order and the relevant regulations, at least at the time of the issuance of said permit, and no further action by the Board in this respect is necessary or appropriate.

Stipulation filed by the parties acknowledges that Fry's application for a construction permit on June 12, 1972 was subsequent to the actual installation of the equipment for which the permit was sought. Accordingly, there is no issue of fact with respect to the Agency's allegations in #72-85 that the installation was made without a construction permit. Fry's defense to this allegation is two-fold, first, that the installation was made pursuant to order entered on May 6, 1971 in Case #71-CH585 in the Circuit Court of Cook County, directing the installation of abatement equipment and secondly, that the Board's original order above quoted directed installation of abatement equipment but made no reference for the need for obtaining the necessary permits.

We find these contentions lacking in merit and hold Fry has violated Section 9(b) of the Act in installing the abatement equipment without the requisite permit. We have examined the Circuit Court Order above referred to and find nothing therein that abrogates the Environmental Protection Act or the relevant Rules with respect to obtaining state permits. The Order does not purport to excuse Fry from obtaining such permits nor enjoin any agency of the State from requiring them. The Order expressly requires Fry to obtain a permit from the County authorities thereby recognizing that the permit process is inherent in the right to install and operate equipment of the sort involved.

Likewise, nothing in our October 14, 1971 order can be construed in any manner as excusing Fry from complying with the relevant regulations and statutory provisions with respect to the issuance of permits. Direction to comply with the statute and regulations has implicit in it, the requirement to comply with the necessary steps in achieving such compliance which require the issuance of permits for the purpose of ascertaining whether the equipment will, in fact, do that which it is being installed to accomplish.

We conclude that nothing contained in either our Order or the Circuit Court Order in any way excused Fry from compliance with the relevant permit requirements contained in the statute and regulations. However, considering the totality of all proceedings involved in this matter, the evident achievement of compliance by Fry in an admittedly difficult situation, the possible confusion that the multiplicity of orders and jurisdictions might have created and the lack of any benefit that would accrue, should we hold otherwise, we are not disposed to impose a penalty for the foregoing violation.

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

IT IS THE ORDER of the Pollution Control Board that:

> Lloyd A. Fry Roofing Company, by installation of equipment without a permit as charged in the complaint in Case #72-85, has violated Section 9(b) of the Environmental Protection Act. For reasons set forth in the opinion, no penalty is imposed.

Mr. Dumelle dissents believing that a penalty should be imposed.

I, Christan L. Moffett, Clerk of the Pollution Control Board, ~~certify~~ that the above Opinion and Order was adopted on the 28th day of June, 1973, by a vote of 3 to 1.

Christan L. Moffett