ILLINOIS POLLUTION CONTROL BOARD
October 3, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
v.) PCB 71-347
DARRILL INDUSTRIES, INC.,)
Respondent.)

Lee Campbell, Assistant Attorney General for the EPA
Richard Johnson, Attorney for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

The Environmental Protection Agency filed a complaint against Darrill Industries, Inc., owner and operator of a soap factory in Chicago, alleging that Respondent had allowed the emission of odors, particulates and gases and had failed to file an Air Contaminant Emission Reduction Program with the Agency in violation of the Environmental Protection Act. Respondent filed its "Proposal" denying the charges and proposing that no fine be levied. The Corporation further alleged that it had ceased the spray drying of detergents on December 23, 1971, 50 days after the EPA filed its complaint; that the alleged sources of pollution were no longer in operation; that the Company would not resume the spray drying operation without approval of the Environmental Protection Agency and that the Corporation was not in financial position to pay a significant fine.

Hearing was postponed so that the EPA could study the proposal. Subsequently the attorneys for the parties appeared before a Hearing Officer and submitted a document designated "Stipulation and Proposal for Settlement". No evidence was presented beyond the brief statements contained in the settlement proposal.

The parties stipulated that the following facts are true: That the business of Respondent Darrill Industries Inc. has included the spray drying of detergents at its factory in Chicago "which spray drying operation resulted in the emissions allegedly constituting air pollution"; that all spray drying ceased on December 23, 1971, and on February 29, 1972 the Corporation ceased general business operations completely (other than marketing) in the State of Illinois; that the plant has not been used since February 29, 1972 and has been placed on the real estate market for sale. The Stipulation does not do an adequate job of submitting the facts regarding the alleged violations of law. The

only reference to the violations is found in paragraphs 4 and 5 of the Stipulation, stating:

> "4. That if there were a hearing, the Environmental Protection Agency would introduce evidence that the Corporation did emit odors and particulates on certain specific dates between July 1, 1970 and December 22, 1971, to wit: October 14, 1971, November 10, 1971 and November 16, 1971 and certain people from the surrounding community would testify that this unreasonably interfered with the enjoyment of their lives.
>
> 5. That if there were a hearing, the Environmental Protection Agency would show that the Corporation failed to file an ACERP with either the Technical Secretary of the Air Pollution Control Board or with the Environmental Protection Agency."

Respondent does not concede that there was a violation of law and no facts are given from which we could conclude that there was a violation. The fact that the Agency has evidence of the emission of odors and particulates on three specific dates falls far short of proving a violation of law. There is no evidence whatsoever of the type and amount of the odors and particulates which were emitted. The additional claim that certain people "would testify that this unreasonably interfered with the enjoyment of their lives" is a conclusion not supported by any detailed evidence and gives us little information about the dimensions of the emission problem. The record is entirely inadequate with regard to proof of emissions in violation of law or the need for filing an Air Contaminant Emission Reduction Program.

The parties seem to have concentrated on showing the Respondent could not afford to pay a penalty. Exhibits attached to the Stipulation show that current liabilities of $1,320,641 exceed current assets by $969,660. Cash of $10,649 and Accounts Receivable for $94,097 are far less than Accounts Payable which total $874,466. Even the sale of the plant property and equipment valued at $337,367 will not permit full payment of current liabilities. The balance sheet shows stockholder's equity at a negative $693,404 which indicates the serious plight of this company's creditors. The Company lost $239,046 in 1970 and lost $321,029 from operations in 1971. In 1971 there was a write down in the value of inventories, write down of fixed assets and write off of deferred charges which increased the loss by another $474,472 and indicated possible accounting problems in the management of the Company. The loss in the first 6 months of 1972 was $70,101 largely from the cost of discontinuing operations. The Corporation has entered into an agreement with a committee of

its unsecured creditors to grant a second mortgage on the real estate and a security interest in all fixtures, machinery, equipment, inventory and accounts receivable and to liquidate all of its assets at the Chicago location.

Apparently the imposition of a penalty in this case would do more harm to the creditors than to the Respondent which is already in such desperate financial condition that it can no longer operate.

The record is not adequate for us to conclude that Respondent has allowed excessive emissions from its plant. Under other circumstances we would return the case to the Hearing Officer for a more explicit stipulation on the facts of the alleged violation or a hearing on the merits. In this case, however, we believe that the purpose of the Environmental Protection Act does not require further proceedings. Respondent is an insolvent corporation which clearly is not polluting the atmosphere at this time and will probably not resume operations. It is not necessary to enter a financial penalty or cease and desist order. Although it seems unlikely that the Corporation will resume business we will order Respondent to obtain a permit from the Environmental Protection Agency prior to spraydrying detergents in the future. With this order we believe the public is protected.

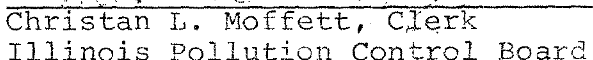
ORDER

It is ordered that:

1. This matter be closed without penalty and without further proceedings.

2. That Respondent obtain a permit from the Environmental Protection Agency prior to spray drying detergents at any time in the future.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this ______ day of October, 1972 by a vote of ______.



Christan L. Moffett, Clerk
Illinois Pollution Control Board