

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
)
v.) PCB 74-479
)
)
CON AGRA, INC.,)
Respondent.)

MS. MARILYN B. RESCH, attorney for Complainant.
MR. THOMAS J. IMMEL, attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On December 18, 1974, the Illinois Environmental Protection Agency (Agency) filed with the Pollution Control Board (Board) a Complaint against Con Agra, Inc.

Respondent owns and operates a facility at Water Street, Chester, Illinois. This facility, which includes a hammermill, is a flour mill that processes wheat into flour and produces, as a by-product, pellets which are used as cattle feed.

The Complaint charged that:

"At no time before, on, or since February 1, 1973, did Respondent possess an operating permit granted by the Agency for the operation of the aforesaid hammermill nor has the Agency issued to Respondent any such permit.

"Rule 103(b)(2) of the Board's Air Pollution Regulations, Chapter 2 provides, in pertinent part:

. . . no person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an Operating Permit from the Agency no later than the dates shown in the following schedule:

Food and Kindred Products Industry operations as defined by code 20 . . . of the 'Standard Industrial Classification Manual' . . . By January 1, 1973.

"Pursuant to Rule 103(b)(2)(B) of the aforesaid Air Pollution Regulations, the Agency extended the above date of January 1, 1973, by one month, thereby making the deadline date February 1, 1973.

"Respondent's hammermill is an emission source as defined in Rule 101 of the aforesaid Air Pollution Regulations. Respondent's flour mill operation, which includes a hammermill, is a "Food and Kindred Products Industry" operation as defined by code 20 of the Standard Industrial Classification Manual.

"Section 9(b) of the Environmental Protection Act (Act) provides, in pertinent part:

(No person shall:) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency . . .

"In light of the foregoing, Respondent has violated Section 9(b) of the Act, and Rule 103(b) (2) of the Air Pollution Regulations, by operating its hammermill without an appropriate operating permit having been issued therefor by the Agency, on every day of operation since February 1, 1973, up to and including the date of filing of this Complaint."

A hearing was held in Chester, Illinois on March 20, 1975, at which a Stipulation of Parties and Proposed Settlement (Stipulation) was submitted. No citizens attended the hearing (R. 26).

Mr. Lloyd McQuilliam has been manager of Respondent's facility in Chester, Illinois, since February 13, 1972, soon after Con Agra took title to the premises (R. 7). This facility in Chester was the first one purchased in Illinois by Respondent, but it owns 18 flour milling facilities in other states (R. 8). The home office of Respondent is in Omaha, Nebraska, and technical personnel there have the primary responsibility for determining the need for permits and pollution control (R. 9).

On October 4, 1973, the Agency notified Con Agra that it needed operating permits for its facility (Comp. Ex. 3). Respondent replied to the Agency on November 1, 1973 (Res. Ex. 4) and submitted operating permit applications to the Agency on January 21, 1974 (Resp. Ex. 5). It was stated in the Stipulation that "on April 16, 1974 Complainant rejected Respondent's application covering the wheat cleaning house because Respondent's application indicated that its hammermill, which is included in the wheat cleaning house, was emitting particulate matter in excess of that allowed by Rule 203(b) of the Air Pollution Regulations and because the application was not accompanied by the required evidence of authority to sign the application. . . . On June 26, 1974, Respondent's attorney, Thomas Immel, sent a letter to Complainant, included in which was a resolution from Respondent's Board of Directors conferring the necessary signatory authority; (and) on July 8, 1974 Complainant again denied Respondent's application covering the wheat cleaning house because Respondent's application continued to indicate that the hammermill was emitting particulate matter in excess of that allowed by Rule 203(b) of the Air Pollution Regulations."

In Con Agra, Inc. v. Environmental Protection Agency PCB 74-311, 14 PCB 295 (October 24, 1974), the Board granted a Variance to Respondent under the following terms while it installed pollution control equipment on its hammermill:

- "1. Con Agra, Inc. is hereby granted a Variance from Rule 203(a) of Chapter Two from August 22, 1974, until March 22, 1975, or such earlier date that it can install a Buhler model ASF-24 air shock stocking filter to control particulate emissions caused by the operation of a hammermill at its facility.
- "2. Petitioner shall apply for all necessary permits from the Agency.
- "3. Petitioner shall submit to the Agency written progress compliance reports on January 22 and March 22, 1975, or such earlier date that it can install the air pollution control equipment specified in Order 1, above."

Con Agra complied with Board Order 3, above (Resp. Exhibits 1 and 2), and the bag filter became operational March 10, 1975, to control emissions from the hammermill. Con Agra reapplied for the operating permit for its hammermill on March 12, 1975 (Resp. Ex. 3).

The Stipulation stated that: "Subsequent to the filing of this Complaint, pre-hearing negotiations indicated to both parties that there exists no issue of fact as to the occurrence of the violation charged in the Complaint in this matter. Respondent, for its part, admits that it has operated said hammermill without possessing the requisite permit, as above set forth, thereby violating Section 9(b) of the Environmental Protection Act and Rule 103(b)(2) of the Board's Air Pollution Regulations promulgated thereunder. . . . Complainant states that its interest in the matter shall be satisfied by an Order requiring a penalty of \$2000.00 and ordering Respondent to discontinue all hammermill operations at its aforesaid site unless an appropriate permit has been applied for within ten (10) days of the Board Order herein and obtained within one hundred (100) days of the Board Order herein."

The Board finds that Respondent violated Rule 103(b)(2) of the Air Pollution Regulations and Section 9(b) of the Act from February 1, 1973, to December 18, 1974, as alleged in the Complaint. We accept the settlement proposal by the parties in the Stipulation.

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

ORDER

1. Con Agra, Inc. violated Rule 103(b)(2) of the Air Pollution Regulations and Section 9(b) of the Environmental Protection Act as more fully set out in the above Opinion.
2. Respondent shall pay, within thirty-five days (35) days of the adoption of this Order, a penalty of \$2,000.00 for its violations of the Act and Regulations established in this Opinion. 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.
3. Respondent shall discontinue all hammermill operations at its Chester, Illinois facility unless an appropriate operating permit has been applied for within ten (10) days of the adoption of this Board Order and obtained within one hundred (100) days of said Board Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of May, 1975, by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board