

ILLINOIS POLLUTION CONTROL BOARD

February 27, 1975

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant,)
)
 v.) PCB 73-515
)
AMERICAN CAN COMPANY,)
)
 Respondent.)

Mr. Dennis R. Fields, Assistant Attorney General, appeared on behalf of the Complainant.

Mr. Charles J. O'Connor and Mr. Phillip M. Heller appeared on behalf of the Respondent.

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

The Illinois Environmental Protection Agency (Agency) originally filed its complaint in this enforcement action on December 7, 1973. In its complaint the Agency alleged Respondent, American Can Company (American), violated Section 9(a) of the Illinois Environmental Protection Act, in that it caused the discharge of contaminants into the atmosphere. The Complaint did not allege that American had violated any Rules or Regulations of this Board.

Shortly thereafter, on March 29, 1974, American filed a complaint for injunctive and other relief in the Circuit Court of Cook County. In that complaint American alleged that various provisions of the Environmental Protection Act, the Board's Procedural Rules, and the Agency's Permit Review Procedures violated constitutional guarantees relating to due process and equal protection. That complaint requested that the Circuit Court grant as relief a temporary and permanent injunction to prevent the Agency or the Board from proceeding with any enforcement action against American. The Agency then requested postponement of the hearing in this matter, pending outcome of the court action filed by American.

No further proceedings were had in the matter, outside of discovery, until a Stipulation and Proposal for Settlement was filed before the Board on December 23, 1974. That Stipulation and Proposal for Settlement acts to conclude both the enforcement proceeding before the Board and the court proceeding initiated by American. A jointly pro-pounded amendment to that Stipulation and Proposal for

Settlement was submitted on motion of both parties on February 6, 1975. The proposed amendment makes only minor changes in certain compliance dates, and does not affect the acceptability of the Settlement in this case.

BACKGROUND

The plant operated by American for the production of various sizes and shapes of containers is located at 6017 S. Western Ave., in Chicago, and employs approximately 2,200 persons. The production of such containers at the American plant involves either or both a coating operation and a printing operation. Associated with the operations is the use of various solvent-containing materials such as enamel, lacquer, and varnish. The use of these solvent containing materials results in the release of hydrocarbon emissions at various points, particularly solvent vapors evolved in the ovens for drying sheets of plate rollercoated with organic coatings or varnish. There are seventeen such ovens in the plant, and each is provided with an emission-control device employing an afterburner, installed during the period 1962-1966.

On January 30, 1973 American filed a permit application with the Agency regarding its Western Ave. plant. That application consisted of 430 pages, and covered 268 process units, plus 3 boilers and 61 stacks. The permit application stated that with the exception of sideseam stripe operations, can-body spray operations and can-body spray drying ovens in "Department 42" which discharged its emissions from a total of six stacks, all other emission sources at the American plant complied with relevant Board Regulations. Permit application also included a compliance program. For the operations in Department 42, the parties have in their stipulation agreed that the compliance problem was attained on schedule by reformulating lacquers so that only non-photochemically reactive materials were used. The Agency denied American's permit application on May 22, 1973.

The Agency's inspections in 1972 disclosed 21 individuals living near the American facility who complained of odors and were prepared to so testify at a hearing. Those individuals described the odors as emitting from the American plant, and characterized these odors as "strong, terrible, heavy or obnoxious". The physical effects of these odors were described as burning eyes, burning throat, difficulty in breathing and general discomfort. The odors were also described as periodic and depending on wind conditions.

The Agency inspection also disclosed that American's after-burners were operated at temperatures at 700°F. The Agency is of the opinion that those afterburners cannot operate efficiently at a temperature under 1400°F.

American contends that the odor complaints result from other and unrelated complaints of those citizens against American. American feels that citizens neighboring its facility are unhappy, among other things, about parking problems caused by American's employees; American points out that the City of Chicago, after an investigation, took no action based on similar complaints.

American also points out that it has for several years experimented with and designed afterburners and catalyst combustion units to reduce emissions.

SETTLEMENT

After extensive discovery the parties submitted a Stipulation and Proposal for Settlement on December 23, 1974, which forms the basis for this Opinion. It is the intent of the parties that Board acceptance of this Settlement will terminate both the enforcement procedure pending before the Board and the court proceeding pending before the Circuit Court of Cook County.

As part of the Settlement, as amended, American will immediately undertake steps to complete such compliance program as previously approved by the City of Chicago. That compliance program covers the seventeen ovens used for drying organic films applied by roller coating to sheets of tinplate. The program includes conversion to water-base varnish and coating by May 30, 1975. The ovens which have not been converted to water-base varnish by May 30, 1975 will be upgraded by replacing the current afterburners on those ovens with catalyst-afterburner units to be operational by March 14, 1975. The schedule for completion of the various portions of this implementation plan are contained in the Stipulation of the parties and appear to be adequate. Additionally, American will make quarterly progress reports on matters pertinent to the conversion to water-base materials and the installation of catalyst-afterburner units. American has already received all required construction permits from the Agency, and has agreed to make proper application for any other applicable permits. The parties have agreed that issuance of further permits is subject to fulfillment of the Agency's duties and responsibilities under the Act and the Board's Regulations.

Although American has denied any violation of the Act or the Board's Regulations, it has agreed to remit \$5,000 to the State of Illinois immediately upon receipt of the Board Order adopting the Stipulation in this matter. American has also agreed to dismiss, without prejudice, the lawsuit filed in Circuit Court to enjoin the instant enforcement proceeding.

Insofar as the Stipulation and Settlement, as amended, appears to provide sufficient provision for compliance, and the abatement of any polluting emissions which may currently exist, the Stipulation is acceptable to the Board.

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

ORDER

It is the Order of the Pollution Control Board that:

1. The joint motion to amend Stipulation and Proposal for Settlement submitted by the parties to this matter is accepted and the Stipulation and Proposal for Settlement in this matter is thereby amended.

2. In conformance with the Stipulation and Proposal for Settlement, as amended, Respondent, American Can Company shall:

a. Immediately take all steps necessary to complete the proposed compliance plan as contained in the Stipulation and Proposal for Settlement in this matter, as amended;

b. Remit to the State of Illinois the sum of \$5,000, such payment to be made immediately upon receipt of this Order, to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

c. Take all steps or actions necessary for dismissal of the lawsuit concerning this matter currently pending in the Circuit Court of Cook County, entitled American Can Company v. Illinois Environmental Protection Agency, et al., Case No. 74-CH 1858.

3. The complaint in this matter is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion & Order were adopted on the 27th day of February, 1975 by a vote 4 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board