ILLINOIS POLLUTION CONTROL BOARD
March 8, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#72-318
v.	)	
	)	
MIDWEST RUBBER RECLAIMING COMPANY	)	

THOMAS A. CENGEL, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
ROBERT L. BRODERICK OF POPE & DRIEMEYER, APPEARED ON BEHALF OF RESPONDENT

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

Complaint was filed by the Agency against Midwest Rubber Reclaiming Company located in Sauget and Cahokia, alleging that between July 1, 1970 and the close of the record in this proceeding, Respondent, in the operation of its rubber reclaiming plant, allowed the emission of odors and other contaminants into the atmosphere, either alone or in combination with contaminants from other sources, so as to cause air pollution, in violation of Section 9(a) of the Environmental Protection Act.

The complaint further alleges that on or about November 1, 1971, Respondent installed a Mikro-Pulsaire bag collector without obtaining an installation permit, in violation of Section 9(b) of the Act and Rule 3-2.100 of the Rules and Regulations Governing the Control of Air Pollution. The entry of a cease and desist order, penalties in the maximum statutory amount, and such further relief as the Board deems appropriate, are sought. We have previously held that we will not consider violations occurring after the start of the hearings, without specification of the alleged offense. See Environmental Protection Agency v. Mystik Tape, A Division of Borden, Inc., #72-180 (January 16, 1973) PCB

Answer filed by Respondent admits the ownership and operation of the rubber reclaiming plant at the location alleged, and admits the installation of a Mikro-Pulsaire collector in August of 1971 without obtaining an installation permit, but alleges that this installation was in replacement of a similar collector for which no permit had been required by the Air Pollution Control Board and that the new installation was made in the belief that no permit would be necessary. The answer denies the remaining material allegations of the complaint. The answer also asserts various legal arguments in defense including the inadequacy of the complaint on the basis of vagueness, that the imposition of a penalty by the Board would violate the Illinois and United States Constitutions, that the absence of objective standards for an odor violation is a deprivation of constitutional guarantees and that the only provisions in the

Regulations which relate to odors and which are controlling in the instant case are Rules 801 and 802 of Part VIII of the Air Pollution Regulations, violation of which has not been alleged nor proven. The same contentions were raised by Respondent in its motions to dismiss before hearing and to dismiss at the close of the evidence. Hearings were held in East St. Louis on November 17, 1972 and in Sauget on November 29, 1972. Briefs were filed by both parties.

We deny both motions to dismiss. We find that the Agency has met its burden of proof and established that the emissions of odors from Respondent's plant cause air pollution as defined in the Act and violate Section 9(a) of the Act. We find that Respondent's installation of the Mikro-Pulsaire collector without an installation permit violates Section 9(b) of the Act and Rule 3-2.100 of the Rules and Regulations Governing the Control of Air Pollution. We find the legal contentions raised by Respondent with respect to procedural and constitutional infirmities of the complaint and proceeding lacking in merit. All contentions made with respect to vagueness of pleading and provisions of the Act, delegation of power to impose penalties, the need for objective standards to establish 9(a) violations and the lack of capability of proving air pollution by subjective evidence have been answered contrary to Respondent's contentions in previous cases decided by the Appellate Court of Illinois and this Board. See Environmental Protection Agency v. C. M. Ford, Appellate Court, Third District, #72-60 (February 4, 1973); Environmental Protection Agency v. Granite City Steel Company, #70-34 (March 17, 1971) 1 PCB 315; Modern Plating v. Environmental Protection Agency, ##70-38,71-6 (May 3, 1971,) 1 PCB 531; and Environmental Protection Agency v. Commonwealth Edison Company, #70-4 (February 17, 1971,) 1 PCB 207. These legal issues have been discussed in substantial detail in the foregoing cases and need not be reiterated in this Opinion.

We take special note, however, of Respondent's contention that only §§801 and 802 of the Air Pollution Regulations can be resorted to in a complaint alleging air pollution as a consequence of odor emissions. A reading of the Regulations clearly discloses that these sections are applicable only to inedible rendering plants. The sections were originally adopted by the Air Pollution Control Board in the Rules and Regulations Governing the Control of Air Pollution. See Definitions and Rule 3-3.280. These rules remain in force and effect pursuant to Section 49(c) of the Environmental Protection Act. The sections contained in present Rules 801 and 802 are verbatim the old Rules of the Air Pollution Control Board and codified in their present form without change in language. Accordingly, there is no merit to the contention that procedures provided in Rules 801 and 802 must be resorted to in order to establish a Section 9(a) violation premised on the causing of air pollution as defined. Unreasonable interference with the enjoyment

of life can only be evidenced by those affected and of necessity, the determination must be subjective. Any other rule would nullify the ability of the Board to make a determination as to the existence of air pollution as the term is defined in the Act. See Environmental Protection Agency v. Granite City, Supra; Environmental Protection Agency v. Mystik Tape, A Division of Borden, Inc., #72-180 (January 16, 1973) PCB ; Environmental Protection Agency v. Kaluzny Bros., Inc., a corporation, #72-160 (February 14, 1973) PCB , Supra.

Respondent's plant is located in a highly developed industrial area. Contiguous to Respondent are the Darling Fertilizer Company and facilities of Cerro Copper and Brass Company. Monsanto's Krummrich plant is located immediately north of the Cerro plant. North of the Monsanto complex are facilities of American Metal Climax Company and Edwin M. Cooper Co. In the vicinity of Respondent's operation are the refineries of Mobile Oil Company, the tank farm of Phillips Pipeline Company and the plants of Sterling Steel Castings Company and Moss Electric Company. The Cahokia Power Station of Union Electric Company, the Sauget Waste Treatment Plant and the railyards of the Illinois Gulf Central Railroad Company are in close proximity. The residential area of Cahokia is generally south of the plant as in Parks Air College. (R. 11/29/72, pp. 127-137; Respondent's X 8, 9, 10, 11 and 12).

Midwest's operation at its present location commenced in 1928. The Company presently employs 275 persons with an annual payroll and benefit costs of approximately $3,500,000. The Company is engaged in the recycling, reclaiming and converting of scrap rubber into reusable material. The reclaiming process consists of grinding scrap rubber, principally old automobile tires, transferring the ground rubber particles from an elastic to a plastic state by a chemical process called devulcanization, and milling the plastic material into cohesive sheets (R. 11/29/72, pp. 141-142). The devulcanization step consists of cooking the ground scrap in large tanks or devulcanizers under pressure with chemicals added. Three types of devulcanizers are used: dry, dynamic and wet. The dry devulcanizer differs from the dynamic in that the scrap rubber in the dry is not agitated during the heating cycle. The wet type requires the introduction of water into the scrap rubber and chemicals to form a slurry. The dynamic method requires less time to devulcanize the scrap. The advantages of the dynamic and dry over the wet are that less time is required to devulcanize and the elimination of dewatering of the scrap after devulcanization. At the present time, Respondent's plant has one dynamic devulcanizer, four dry devulcanizers, and 16 wet devulcanizers. The released pressure from the three types of devulcanizing referred to as "blow-down" passes through water scrubbers prior to emission from stacks. None of these water scrubbers has been

tested for efficiency of removal. The third step in Respondent's reclaiming process is milling. This step of the process prepares the reclaimed rubber for distribution by rolling the reclaimed rubber into sheets. Approximately 20,000 tons of scrap rubber are recycled each year in the manner described. Prior to 1965, Respondent burned the rubber that adhered to the wire present in tires. The burning process ceased in that year, and the residual material was hauled away. In 1969, rotoclones using centrifugal fans for the scrubbing of air, were installed to abate odors. Later in the same year, a scrubbing system on the "blow downs" on heaters was installed. In 1971, a Venturi water scrubbing systems on its dynamic vulcanizer and the digester dischargers were installed. Operating cost for this equipment is stated to be $40,000 annually.

Respondent admits the installation of the Mikro-Pulsaire collector, unquestionably new equipment designed to control the emission of air contaminants, without a permit (R. 158). The contention that it did so believing that it was in replacement of a facility for which no permit was needed is not pursuasive. Respondent's position is premised on the alleged approval by the Air Pollution Control Board of a Letter of Intent submitted by the Company to the Board in 1967. Nothing contained in this document or any action by the Board suggests the waiver of a permit requirement (R. 184). There is no dispute that the Mikro-Pulsaire collector is new equipment intended for the controlling of air contaminants for which the obtaining of a permit is mandatory under both Section 3-2.100 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Act. We find these provisions have been violated by the installation so made. See EPA v. Kaluzny Bros.,Inc.#72-160,Supra).

The determination of violation of Section 9(a) with respect to the causing of air pollution presents a more difficult issue. As is characteristic of many areas within the State, Respondent's facility is part of a highly-developed industrial complex. Some emission of odors from such an area is inherent in the operations being conducted. At the present time, with the exception of inedible rendering plants, no objective standards for the determination of odor violation are provided in the Regulations. Under the Environmental Protection Act, "contaminant" is defined, among other things, as "any odor...from whatever source". Air pollution is defined 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 unreasonable interference with the enjoyment of life or property". Section 9(a) of the Act states that:

> "No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any state so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act."

cease and desist all violation of said Rule within 120 days from the date hereof, pursuant to the installation of such equipment as will be necessary to achieve this result and the acquisition of the requisite permits from the Agency. We are aware that some amount of hardship may result as a consequence of our Order but believe that the hardship on the community from unabated pollutional discharges, particularly if multiplied by the number of industries that would seek to be exempt on the theory advanced by Respondent, would be far greater.

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

IT IS THE ORDER of the Pollution Control Board:

1. Penalty in the amount of $2,500 is assessed against Respondent for violation of Rule 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution, between July 1, 1970 and December 18, 1972, the date of the hearing herein. Penalty payment by certified check or money order payable to the State of Illinois shall made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. Within 60 days from the date hereof, Respondent shall submit a program for control of its pollutional discharge, and within 120 days from the date hereof, Respondent shall cease and desist its pollutional discharges in violation of the Rules and Regulations Governing the Control of Air Pollution and shall obtain the necessary permits for the required installations from the Environmental Protection Agency.

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