ILLINOIS POLLUTION CONTROL BOARD
July 31, 1975

LLOYD A. FRY ROOFING COMPANY	)	
	)	
	)	
v.	)	PCB 71-4
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
REV. LOUIS HEMMERICH, ET AL	)	
	)	
	)	
v.	)	PCB 71-33
	)	
LLOYD A. FRY ROOFING COMPANY	)	

BURTON Y. WEITZENFELD AND PAUL LEEDS, ATTORNEYS FOR LLOYD A. FRY ROOFING COMPANY, PETITIONER AND RESPONDENT;
PATRICK A. KEENAN AND DENNIS GROSS, FOR REV. LOUIS HEMMERICH, ET AL, COMPLAINANT;
JOHN McCREERY AND FRED PRILLAMAN, ATTORNEYS FOR ENVIRONMENTAL PROTECTION AGENCY;
JAMES RUBIN, ASSISTANT ATTORNEY GENERAL;
PETER C. ALEXANDER, ATTORNEY FOR THE COUNTY OF COOK.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

This matter is before the Board on remand by the First District Appellate Court. Lloyd A. Fry Roofing Company (Fry) appealed the Order of the Board in the aboved captioned enforcement proceeding (Rev. Louis Hemmerich, et al v. Fry, PCB 71-33, 2 PCB 581 (October 14, 1971)). The First District Appellate Court sustained the Board's finding that Fry had violated Section 9(a) of the Environmental Protection Act (Act) by causing air pollution which "unreasonably interfered with enjoyment of life and property" (Lloyd A. Fry Roofing Company v. Pollution Control Board et al, Ill. App. 2d , N.E.3d (, 1975)) Docket Number 56629) (Fry v. PCB et al).

The Appellate Court reversed the Board's finding that Fry had violated the Rules and Regulations Governing the Control of Air Pollution (Air Rules). The Court found that the complaint did not allege violations of the Air Rules, and therefore the Board could not properly find Fry in violation of the Air Rules. The Court remanded the case to the Board for a redetermination of that appropriate portion of the $50,000 penalty which should be imposed for the violation of Section 9(a) of the Act.

Although our original Opinion did not specifically find Fry to have unreasonably interfered with the enjoyment of life or property of nearby residents, the Court found that "sufficient, competent evidence was adduced at the hearing to support a finding of unreasonable interference with life and property" (Fry v. PCB et al). Upon remand, we are to find what appropriate penalty should be imposed upon Fry for the violation of Section 9(a) in accordance with Section 33(c) of the Act.

The record of the proceeding, concluded on August 12, 1971 after six hearings, and containing a transcript of 906 pages, clearly establishes that Fry has caused air pollution as defined in the Environmental Protection Act, Section 3(b) and has violated Section 9(a) of the Act (Fry at 2 PCB 582). Many witnesses testified concerning the interference caused by Fry's discharge of contaminants. Approximately twelve members of a community group known as Save Our Resources and Environment (S.O.R.E) testified and presented affidavits which established that Fry's emissions had the following effects:

1. interfered with their enjoyment of their property and environment,

2. inability to conduct Little League baseball and football in contiguous areas,

3. caused their eyes to tear and sting and throats to burn,

4. made them sick to their stomach,

5. made them cough,

6. prevented their continued enjoyment of Summit Park, and

7. filled their homes with odors and gave them headaches and nausea.

Testimony of Ronald Kluszewski, a trustee of the Village of Summit, supports that of S.O.R.E members in that he presented the contents and background of a resolution passed by the trustees on January 18, 1971, testified to numerous citizen complaints he had received, and testified that he was able to pinpoint the the "obnoxious" odor as emanating from Fry and that it interfered with his enjoyment of his home. Citizen complaints were the subject of testimony by the Summit Chief of Police. Mr. Steven Rosenthal, Environmental Protection Agency Engineer, testified that during his visits to Fry he had observed a disagreeable odor or a piercing stench.

Based upon this record, we find that Fry's discharges of contaminants have had an unreasonable and substantial adverse interference with the surrounding citizen's health, general welfare, and physical property.

As noted by the Court, Fry introduced evidence of the operation of the plant. This evidence establishes that the plant has a substantial social and economic value in that it produces asphalt roofing and allied products used in the construction business.

Fry's plant is located in Summit, Illinois in the general area of the Chicago Metropolitan Sanitary District sludge lagoons, The Trumbull Asphalt Co., the Corn Products Co. plant, various residences, the Summit Park which is directly north of Fry, and Walsh School, located one block north of Fry on Archer Road (affidavit of Katherine B. Bassa). The record establishes that the manner in which Fry operates its plant is unsuitable to the surrounding area. The passage of the Act by the Legislature provided remedies to prevent or lessen air pollution so that people living in industrial communities must not "suffer without remedy any uncomfortable odors which are ordinarily and necessarily prevalent there" (City of Monmouth v. Pollution Control Board, 313 N.E.2d 161, 163 (May 29, 1974)).

The counsel representing Fry and the manager of Fry, testified that no emission control devices were employed, but that plans for installation of such devices were being made (R.18). Although questioned by Fry, it is clear that the principle source of emissions causing the air pollution are the saturators where heated asphalt is absorbed by felt. No air pollution devices are employed on the stacks connected with the saturators. Mr. Harvey Hoffman, former Director of Environmental Control for the Fry plant, testified about pollution control equipment installed at Fry's twenty-six

other asphalt roofing plants located throughout the country. The Air Pollution Engineering Manual, U.S. Department of Public Health, 1967 was introduced as EPA Exhibit 3. This Exhibit depicts the state of the art in emission control for asphalt saturators. This evidence establishes that it would be both technically practicable and economically reasonable for Fry to install control equipment to abate the violation of Section 9(a).

Evidence clearly establishes that Fry violated Section 9(a) of the Act on a continuing basis from the adoption of the Act in 1970 up to the date of filing of the complaint and continuing until Fry either shut down or installed control equipment. A June 20, 1968 letter from Mr. C.W. Klassen, Technical Secretary of the Illinois Air Pollution Control Board, to Francis Nelson, Chief Engineer of Fry, clearly establishes that based upon information supplied by Fry, Fry had particulate emissions of 65 lbs/hour as compared to the then allowable rate of 8.8 pounds per hour (EPA Exhibit 2). Applying the conservative figures of EPA Exhibit 3, Fry has a range of particulate emissions of between 20 to 70 lb/hour. This supports the citizen testimony which shows that Fry has continued to violate Section 9(a) from 1970 to the date of the hearing.

Because of the great degree of unreasonable interference with the enjoyment of life and property of the residents surrounding Fry, we find that a substantial penalty is warranted to compel Fry to achieve compliance. As noted by the Court, "Mr. Fry told the group (members of S.O.R.E) that he knew he was polluting, but S.O.R.E could take him to Court to make him stop". This occurred at a meeting on December 18, 1970. Evidently S.O.R.E listened, as they filed the present complaint on February 21, 1971, some 73 days later.

It is our determination that a penalty of $40,000 should be imposed against Fry for the violation of Section 9(a). The original Opinion would have imposed a penalty of $9,000 for the Air Rule violation and $1,000 for the failure to file an ACERP. By imposing a substantial penalty for the violation of Section 9(a) of the Act, the Board feels that Fry will be more likely to comply with the provisions of the Act without S.O.R.E having to take Fry to Court again. We therefore, impose this penalty not as a punitive measure, but rather as an aid to the enforcement of the Act.

It should be noted that the cease and desist provision of the Board's Order of October 14, 1971 was upheld by the Court. We have modified the following Order based upon the reversal of our finding of violations other than Section 9(a) and the remand for determination of the property penalty. The requirement that Fry cease and desist from violating Section 9(a) of the Act is consistent with our former Order (Fry at 2 PCB 587).

Mr. Henss dissents.

ORDER

1. That Lloyd A. Fry Roofing Company cease and desist from violating Section 9(a) of the Environmental Protection Act at its Summit operation.

2. That Fry shall pay a $40,000 penalty for causing air pollution in violation of Section 9(a) of the Environmental Protection Act as set forth in the above Opinion.

Penalty payment by certified check or money payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 31st day of July, 1975 by a vote of 4-1.

Christan L. Moffett, Clerk
Illinois Pollution Control Board