ILLINOIS POLLUTION CONTROL BOARD

November 8, 1973

ENVIRONMENTAL PROTECTION AGENCY COMPLAINANT	)	
v.	)	PCB 73-111
ALLIED CHEMICAL CORPORATION RESPONDENT	)	

THOMAS A. CENGEL, ASSISTANT ATTORNEY GENERAL, in behalf of the ENVIRONMENTAL PROTECTION AGENCY
EDWARD G. MAAG, ATTORNEY, in behalf of ALLIED CHEMICAL CORPORATION

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

This action involves a complaint filed by the Environmental Protection Agency against Allied Chemical Corporation. The action alleges violations of Section 9 (A) of the Environmental Protection Act, by allowing the discharge of sulphur dioxide, sulphur trioxide, acid mist, obnoxious odor, and other contaminants into the atmosphere. Allied, in a document entitled "Answer," denied the above allegations, and the matter was set for hearings.

Allied Chemical Corporation owns and operates facilities in Fairmont City, St. Clair County, Illinois. Fairmont City is located in a fairly industrialized area. Industry and residential property are in close proximity throughout the entire area. This property situation has existed for many years and is not a case of recent encroachment by either industry or residences.

Before getting into the matter at hand, an answer to Respondent's motion to dismiss must be rendered. At the close of hearings (7, 23, 73 R. 255), counsel for Respondent filed a motion for dismissal of the complaint on the following grounds:

1. Evidence gathered is insufficient to sustain the complaint.
2. The section of the complaint asking for a penalty is unconstitutional.
3. Allied has been deprived of its right to a trial by jury.

The above grounds for dismissal have been raised in many other instances and have been handled at length in past proceedings:

1. The text of this opinion will detail the evidence gathered. It is the sole purpose of this opinion to decide just this question. If indeed that first point is valid, the Board shall so rule.
2. Respondent correctly alleges that the authority to impose a monetary penalty has been questioned in the Illinois Appellate Courts. As of this time there are conflicting judgments rendered by different Appellate Districts. The matter is now pending before the Illinois Supreme Court. This court will render the final decision in the matter. Until such time the Board will continue to function under the powers vested in it as provided by the "Environmental Protection Act," Title XII, Section 42.
3. The right to a jury trial has been raised in (PCB 71-11), (71-51). In both cases the Board ruled that a trial by jury is not required in this type of action. The Respondent is referred to PCB 70-38 [EPA vs. Modern Plating Corp.], for a detailed discussion of just such a question.

The motion for dismissal is hereby denied.

To return to the facts alleged in the instant case, a brief discussion of Respondent's facilities is in order. Allied operates three main plants at its Fairmont City location, these being a sulphuric acid plant, an aluminum sulphate plant, and a sodium aluminum sulphate plant. The plant in question in the instant case is the sulphuric acid plant. Examination of Comp. Exh. #3 gives a good picture of Respondent's plant flow and stack layout:

Two converters are in series in which SO_2 is converted to SO_3 gas. Spent acid is also used as a raw material. The process used at Allied's plant is referred to as the "Contact Process." The sulphuric acid produced is 99.3 to 99.5% sulphuric acid. The design capacity of the plant is between 500 and 550 tons of acid per day, with present production running at about 300 tons per day. Emissions from the plant are vented to the atmosphere through three stacks. Stack #3 is used to vent #3 and #4 towers, Stack #2 vents tower #2, and Stack #1 vents tower #1 and a tail tower. The only emission control device is located between the tail tower and Stack #1. This is a Brinks Mist Eliminator installed in 1971.

A series of hearings were held covering three days and some

470 pages of testimony were gathered. In its opening statement (6/21/73 R. 5) the Agency explained its complaint to allege violations of 9 (A) in that Allied's emissions had

> "unreasonably interfered with the enjoyment of life and property of those neighbors surrounding the Allied Chemical plant, and have in part caused damage to vegetation growing on or around the properties of the neighbors of Allied Chemical plant."

We then have two counts and the Board will consider them jointly. The final order will differentiate between its findings on both counts.

Both counts were alleged to have occurred on or before July 1, 1970, and continuing through the filing date of this complaint.

This case is a 9 (A) case for a very important reason; the rules regulating sulphur dioxide and sulphuric acid mist (204 [f]) will not become effective until December 31, 1973. All evidence gathered and pertaining to the "amounts" of emissions are clearly premature and shall have no weight in the discussion of this action. Until December 31, 1973, Respondent is under no obligation whatsoever to comply with rules which have a compliance date two months hence.

Respondent does have an obligation to abide by the provisions of Section 9 (A) of the Environmental Protection Act, and these provisions are independent of the actual quantities emitted. As stated in PCB 71-4 (Lloyd A. Fry Roofing Company v. Environmental Protection Agency),

> "To ascertain whether Respondent's operation constitutes air pollution, it is necessary to determine whether operation substantially interfered with the enjoyment of life and property of the community,"

or, more to the point in PCB 71-193, the Board held that

> "Board may find air pollution by virtue of contaminants notwithstanding lack of emission standards for particular contaminants."

The Complainant's case primarily then boils down to its proof of unreasonable interference with enjoyment of life and property.

Citizen Witnesses: Ten citizen witnesses testified at the hearings. All of these witnesses testified that varying degrees of unpleasant emissions emanated from Allied's facilities. Complaints of choking and coughing were common (R. 15, 32, 53, 69, 144, 196, 204, 6/21/73, R. 6, 7/9/73). A number of witnesses testified that at times the conditions were so bad that the only option left open to them was to leave home.

> Mrs. Sanders testified: "In fact, it has been so bad sometimes that my husband and I have left the area, left the house and went up to Collinsville to the parents or something. It got so strong we had to leave the area." Mr. Ayres testified: "Occasionally, a couple of times we would all just get into the car and say, 'Let's go out to the park;' we would get in the car and go out to the park. It has been that bad."

The question of alleged vegetation damage was testified to by Mr. Essary (R. 18, 26) when he alleged that grass would not grow on his property.

As rebuttal the Respondent brought out that the area surrounding Allied is highly industrialized and that many facilities tend to contribute to the poor quality of the air. Although many witnesses admitted knowledge of other manufacturing facilities in the area, all witnesses identified Allied as the source of their major complaints.

Respondent does not deny (see Resp. Brief P. 13) that at certain times emissions from the plant have been offensive to some people, but argues that this is an unusual condition. Many witnesses, however, have complained to Respondent regarding offensive odors (R. 55, 151-3, 199, 207 6/21/73; R. 8 7/9/73), in at least one instance as far back as 1960 (R. 184). The record shows that Respondent has been courteous in answering complaints, but that nothing was done to alleviate the situation.

In rebuttal to Mr. Essary's allegations of "grass not growing," Resp. entered exhibits #1, 2, 3, 4, showing homes having what appears to be normal healthy grass and trees. Respondent also stated (R. 212, 8/23/73) that 75 acres of land on Respondent's property has been yielding wheat and bean crops since 1962.

It is the Board's opinion that the case for vegetation damage has not been significantly proven by Complainant.

Respondent makes much of the point that citizen witnesses testified that the air quality seemed unchanged for many years. The facts were brought out, under oath, by Mr. Moog (counsel for Respondent and lifelong resident of area), R. 243, that the area was indeed less polluted now than in 1940. The basis of this is that several facilities that have contributed to air pollution have left the area, and that Respondent has cut its production significantly in the past years. Although the Board feels that Mr. Moog's statements are true, they do not significantly discredit the citizen witnesses. Nor does the fact that other facilities left the area and the fact that Allied has curtailed production (not for environmental reasons) justify or in any way exonerate Respondent from its present situation.

Respondent's Argument: As mentioned above, Respondent does not deny that on occasions problems occur. Mr. Hertzberger testified (R. 210) that under plant upset conditions, complaints come in. He further testified that atmospheric conditions can yield complaints. The major arguments made by Respondent were as follows:

1. Attempts to abate problem: The Respondent did indeed at great expense install a Brinks Mist Eliminator on its #1 stack. This was before any regulations were in effect and was both in anticipation of regulations and "so it would not be miserable to the local residents," (R. 119). Furthermore Respondent claims it showed good faith by completely shutting down its oleum line for eight months while installing said Mist Eliminator.

2. The Respondent has entered testimony that complaints were courteously handled and that attempts to isolate and remedy the situation leading up to the complaint were attempted (R. 144). Respondent denies that the frequency of annoyance is anywhere near the frequency attested to by the ten citizen witnesses (R. 145).

> "I have come out and talked to the people, stood on the front porch, and 99.9% of the cases would have stopped five minutes before I got there, because when I got there, there was no physical discomfort that was evident to me, and I have sent the other people out in the area, and this has been their experience also."

There is testimony that after complaints were brought to the attention of the company, the problem seemed to abate itself temporarily (R. 183, 207). Respondent testified to the difficulty of changing conditions in the plant to abate the problem. However, the fact that on some instances operational changes seemed to help would be an indication that more could have been done.

3. Respondent claims that they have indeed investigated the use of control equipment on the remaining towers, and have found them to be uneconomical. This is because (R. 183) of the design of the plant; newer design plants are more economical to control. A figure of $2.5 million was put forth as a total compliance price. The acid plant lost $33,000 in the last part of the year (R. 143), and a decision has been made to shut down. This decision, while regrettable, will be the "ultimate" pollution control device. The latest shutdown date is December 31, 1973. It will be part of the Board's order to insure this shutdown date.

4. Much testimony was elicited as to Allied's interrelationship with Shell Oil Company. Respondent claims that while it operated at a loss in 1972, received complaints, and can purchase its own acid requirements elsewhere, that it is continuing to operate just as a

means of supplying Shell Oil Company with acid.

It is granted that on the surface a true hardship would befall Shell if Respondent would shut down. It is also true that Shell is a major corporation with many resources. If it was Respondent's intent to use Shell's situation as a reason for continuing operations, it was then Respondent's obligation to prove that Shell Oil Company had no options. With the exception of reference to problems regarding storage of spent acid, Respondent has failed to meet its obligation. Respondent has merely shown that an alternative route for Shell may have been extra expense. It is also noteworthy that a new sulphuric acid plant is under construction on Shell's property. This new facility is scheduled to start up on December 31, 1973. This facility will not only provide Shell Oil with its requirements, but may also supply Respondent with its requirements.

Respondent was well aware of the problem encountered by its continuing operation. Only the most minor attempts to abate this problem were made, although complaints ranged back to 1960 (R. 184). The fact that controls were not installed in the last few years because of a planned shutdown does not lessen the fact that Allied has caused severe discomfort to its neighbors for many years. While it is true that witnesses may tend to exaggerate complaints when put on the witness stand, the volume of testimony rendered makes it clear that serious hardship was imposed on the residents of the area. While it may be true that Respondent's acid plant has lost money in the last year, it has most likely made profits in past years. Some of those profits could have been reasonably expended on abatement measures. It is precisely for these past years that a monetary penalty will be imposed.

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. Allied Chemical Corporation is to cease and desist violations of Section 9 (A) of the Environmental Protection Act at its Fairmont City sulphuric acid plant no later than December 31, 1973.

2. Allied Chemical Corporation has been found in violation of Section 9 (A) as regarding interference with the enjoyment of life and property of its neighbors.

3. Allied Chemical Corporation has not been found to have caused any damage to surrounding vegetation.

4. Respondent shall pay to the State of Illinois the sum of $10,000 within 35 days from the date of this Order. Penalty payment by certified check or money order 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, certify that the above Opinion and Order was adopted by the Board on the 8th day of November, 1973, by a vote of 5 to 0.

Christan L. Moffett