

ILLINOIS POLLUTION CONTROL BOARD  
April 17, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
  ) )  
  Complainant, ) )  
  ) )  
  v. ) )      PCB 72-158  
  ) )  
ROYAL PACKING COMPANY, INC., ) )  
  ) )  
  Respondent. ) )

John W. Leskera, Assistant Attorney General, on behalf of the  
Environmental Protection Agency;  
Leo H. Konzen, on behalf of Royal Packing Company, Inc.

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

By complaint filed on April 14, 1972, the Environmental Protection Agency ("Agency") charged the Royal Packing Company, Inc., owner and operator of certain facilities including but not limited to an inedible rendering plant located at St. Clair Avenue and Ice Plant Road, National Stockyards, Illinois. The Agency further charged that on or before September 20, 1971, that the Respondent discharged obnoxious odors and other contaminants into the atmosphere so as to cause or tend to cause air pollution, either alone or in combination with contaminants from other sources, in violation of Section 9(a) of the Environmental Protection Act ("Act") (Ill. Rev. Stat., 1971, Ch. 111 1/2, §1009(a)) and in violation of Rule 3-3.280 of the Rules and Regulations Governing the Control of Air Pollution (hereinafter "Air Rules"), continued effective pursuant to Section 49(c) of the Act.

Further, on or about December, 1967, Respondent caused or allowed the installation and/or operation of a blood dryer system without first obtaining an installation permit from the Complainant in violation of Section 9(b) of the Act and Rule 3-2.100 of the Air Rules. The record further indicates that on January 4, 1973, the Complainant, the Agency, filed an amendment to the complaint and substituted the following language: that in the years 1969 and 1970, Respondent caused or allowed the installation and/or operation of a blood dryer system without first obtaining an installation permit from the Complainant in violation of Section 9(b) of the Act and Rule 3-2.100 of the Air Rules.

The Respondent, in answer to the amended complaint, denies all of the allegations with the exception of ownership and the type of operation that is described in the Agency's complaint as stated above. In addition, the Respondent's answer to the amended complaint urges four affirmative defenses. The first is that the definition of "Air Pollution" in Section 9(a) of the Act is "so vague, uncertain, and indefinite that men of common intelligence must guess at its meaning, and citizens are not adequately apprised of the conduct proscribed therein, and the person charged with violations of the Act is not fairly informed of the nature and cause of the charges against him". The definition of "Air Pollution" is not contained in Section 9(a) of the Act but in Section 3(b) and is defined as follows:

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(b) 'AIR POLLUTION' is 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 unreasonably interfere with the enjoyment of life or property."

It is the finding of the Board that the definition of "Air Pollution" as defined in the Act is not vague, uncertain or indefinite and that men of common intelligence can certainly understand its meaning. Statutory authorization need not delineate with scientific precision, the characteristics of all types of pollution. To do so would be unrealistic.

The second affirmative defense goes to Rule 3-3.280 of the Rules and Regulations Governing the Control of Air Pollution and alleges that attempts to permit deprivation of private property without due process of law by the use of improper and inadequate standards and methods to prove violations of law, all in violation of Article II, Section 2, of the Illinois Constitution and Article XIV, Section 1, of the Constitution of the United States.

The third affirmative defense goes to Rule 3-2.100 of the Rules and Regulations. The Respondent alleges that Rule 3-2.100 of the Rules and Regulations Governing the Control of Air Pollution is illegal, void and invalid in that it unlawfully attempts to legislate by the adoption of rules of greater scope and breadth than authorized by the statutes of the State of Illinois, or the attempt by the General Assembly to delegate to the Air Pollution Control Board such authority is an unlawful delegation of legislative power. That said Rule amounts to the attempt to deprive the rights of persons to private property in violation of Article XIV of the Constitution of the United States and Section 2 of the Constitution of the State of Illinois.

We reject the Respondent's first three affirmative defenses, the subject matter having been covered thoroughly in Environmental Protection Agency v. Granite City Steel Company, PCB72-34, and C. M. Ford v. Environmental Protection Agency, and Pollution Control Board of the State of Illinois, PCB71-307.

As to the fourth affirmative defense, the Respondent alleges that a permit has been issued for the installation of pollution abatement equipment, and also, the Environmental Protection Agency has issued an operators permit for both the blood drying process and the meat rendering process. This last affirmative defense would appear to be more in mitigation than in defense since for the years charged in the amendment to the complaint, to wit: 1969 and 1970, the Respondent presented no evidence to rebut the Agency's allegations, but did in fact admit to operating without a permit in violation of Section 9(b) of the Act and Rule 3-2.100 of the Air Rules.

In the 350 pages of testimony, there were two offers of proof made by the Agency. The first had to do with testimony concerning violations predating the Act or any public health regulation. We think the Hearing Officer properly sustained the Respondent's objection. The second offer of proof made by the Agency had to do with the submission of certain exhibits consisting of photographs and memorandums. We think the Hearing Officer properly overruled the Respondent's objection in this case and ratify the Hearing Officer's Rulings.

There is no major disagreement on the facts of this case. Respondent's operation consists of the rendering of meat scraps and bones in the manner characteristic of operations of this kind. The violations alleged under Section 9(a) of the Act and of the Rules Governing the Control of Air Pollution we find have been proven. Testimony by the Agency's witnesses after having taken numerous scentometer readings, together with photographs (Complainant's Exhibits 1-5) to illustrate the visibility of the plume from Respondent's stack and the direction of the wind upon which the scentometer readings were based, together with citizen testimony as to the obnoxious odors. Witnesses testified as follows:

George Marshall (P. 253) resides one-half block from Royal.

- "Q And, what about the smell? can you characterize it at all?
- A No way you can describe it.
- Q Well, can you describe whether it is pleasant or not?
- A It's unpleasant. It sticks right in your throat. Make you sick at your stomach.
- Q All right. And, how long have you lived at your current address?
- A We have been there, I think, about three years. We lived further down the street for around eleven years.

Q For how long have you been subjected to these odors?  
A Ever since we have been out there.  
Q For the last --  
A Fifteen years."

James Murphy (P. 258) resides one-half block from Royal.

"Q How long have you lived at your present location?  
A Be two years this March.  
Q And, have you detected this odor throughout that time?  
A Yes, I have.  
Q Are you able to have your dinner or your other meals while that odor is --  
A No sir, I cannot eat with that smell."

Agnes Counts (P. 262) resides one-half block from Royal.

"Q What can you tell us about odor emissions from the Royal Packing Plant?  
A Well, some days it's nearly all day but most in the evenings, oh say, from 5:00 on and it's terrible.  
Q Can you describe it? Can you characterize it?  
A That's hard to say. It's the worse smell you have ever had, I can tell you that.  
Q Are you able to have your dinner?  
A No."

And even the Respondent's witness admitted to the odors (P. 341).

The evidence indicates that the Respondent now has a proper permit and that he is proceeding with his control equipment, the cost of purchase and installation thereof aggregating \$40,000 (P. 338), either on or ahead of schedule. This we take as mitigating evidence. We direct that the Respondent cease and desist its odor emissions and make a progress report within the next 60 days to the Agency. Because of the long standing violations as evidenced herein, we impose a penalty in the amount of \$3,000.

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 \$3,000 is assessed against Royal Packing Company for violation of Rule 3-3.280 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Environmental Protection Act in failing to obtain a permit for the installation of its equipment and for causing air pollution in violation of Section 9(a) of the Act. 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.

2. Within 60 days from the date of this order, Respondent shall cease and desist the causing of odor emissions so as to cause air pollution as defined in the Environmental Protection Act and shall report its progress to the Environmental Protection Agency.

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 17<sup>th</sup> day of April, 1973, by a vote of 3 to 0.

Christan L. Moffett

