ILLINOIS POLLUTION CONTROL BOARD
January 3, 1975

ENVIRONMENTAL PROTECTION AGENCY COMPLAINANT	)	
v.	)	PCB 74-179
GEORGIA-PACIFIC CORPORATION, a Georgia Corporation, RESPONDENT	)	

MR. MARVIN N. BENN, ASSISTANT ATTORNEY GENERAL, in behalf of the ENVIRONMENTAL PROTECTION AGENCY
MR. BRUCE A. HUBBARD, ATTORNEY, KIRKLAND & ELLIS, in behalf of the GEORGIA-PACIFIC CORPORATION

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

On May 13, 1974, the Environmental Protection Agency (Agency) filed a complaint charging Georgia-Pacific (Respondent) with violation of various rules and regulations of Chapter 2 of the Board's Air Pollution Regulations. Hearings were held on July 9, 1974, and August 13, 1974, at which time a Stipulation of Facts and Proposal for Settlement was entered into evidence.

After careful review of the Stipulation entered into by both parties, the Board finds that the terms contained therein will result in an equitable disposition of the case and will accept it. Said Stipulation is a long and detailed review of the facts leading up to the filing of the instant Complaint, as well as facts which will allow us to better determine guilt or innocence as regards certain alleged infractions of the Board's Rules. The reader is referred to the original Stipulation for an in-depth discussion of the facts, as we will just summarize said Stipulation in this Opinion.

Georgia-Pacific owns and operates at 1581 E. 98th Street, Chicago, Illinois, a facility for the manufacture of various products used in dry-wall construction. Four main product lines are manufactured. Among the various raw materials utilized is asbestos (both chrysotile and caledria asbestos), which accounts for approximately 5% of the final products. Another major raw material is limestone which is received by the plant via rail cars and then transferred to a 200-ton storage bin.

The Agency has charged violations as follows:

1. Manufacture or processing of asbestos-containing products without first obtaining a permit - alleged violation of 9(b) of the Act and Rule 622 of the Air Rules.

2. Failure to designate a full-time employee to supervise as-

asbestos-handling activities - alleged violation of Rule 621 (a) of the Air Rules.

3. Failure to adequately notify employees of dangers of exposure to asbestos - alleged violation of Rule 621 (b) of the Air Rules.

4. Failure to provide means to remove visible asbestos from the clothing of employees - alleged violation of Rule 621 (c) of the Air Rules.

5. Failure to immediately vacuum wastes or otherwise collect and seal asbestos wastes - alleged violation of Rule 621 (d) of the Air Rules.

6. Failure to control exhaust air (asbestos-bearing) so as to duct such air through a pollution control device - alleged violation of Rule 652 of the Air Rules.

7. Failure to adequately package asbestos wastes for transport - alleged violation of Rule 657 of the Air Rules.

8. Operation of limestone storage areas in such manner as to allow fugitive particulate matter to escape - alleged violation of Rule 203 (f)(1) of the Air Rules.

9. Failure to obtain an operating permit for certain bins, hoppers, and blenders, etc. - alleged violation of Rule 103 (b)(2) of the Air Rules and Section 9 (b) of the Act.

10. Failure to obtain a construction permit for the above (#9) equipment - alleged violation of Rule 103 (a)(1) of the Air Rules.

Contact between the Agency and Respondent was first established on July 27, 1973, at which time Inspector N. Thomas (Agency) noted white powder emissions from a limestone unloading operation. At this time Respondent was not notified of said inspection. In a later inspection (August 2, 1973) Inspector Thomas learned from Respondent that an unloading system was to be installed at a cost of $58,000. At this visit Respondent was notified of the need for asbestos, operating, and construction permits. Also at this meeting internal housekeeping procedures were noted to be poor.

Respondent then engaged a consultant to prepare the required application forms. On August 27, 1973, Respondent was notified, by letter, of possible violation conditions, at which time Respondent initiated steps to determine if indeed violations did exist. In a letter filed October 22, 1973, Respondent answered the Agency's letter relating its feelings that: Fugitive emissions would be controlled by the new unloading system; permit applications would be submitted within two weeks; and that Respondent felt that it was in conformance with Rules 621 (b), (c), and (d).

On November 1, 1973, Respondent filed its permit application, which was rejected by the Agency as being insufficient on November 8, 1973. Respondent then retained a consultant to further study their asbestos-related activities. Such study resulted in a report which allegedly was sent to the Environmental Protection Agency. For some unknown reason this report was never received by the Agency. Although the presence of such report would have bearing on the good faith efforts of Respondent, it would in no way bear upon actual violations which did or did not exist.

A further inspection on February 16, 1974, by Agency and Attorney General personnel noted further evidence of possible violations, and air samples taken at this visit showed the presence of asbestos-like fibers. As mentioned above, the instant Complaint was filed on May 13, 1974.

After negotiations between the Agency and Respondent the following information on each count was stipulated to:

1. Rule 621 (a). The Environmental Protection Agency has withdrawn this charge in that Mr. M. Palmowski was at all times responsible for asbestos activities within the plant. Charge dismissed.

2. Rule 621 (b). Facts were presented to the Board so as to allow us to render an equitable decision.

Respondent alleges that each employee is given pre-and post-hiring instructions as to the potential hazards of asbestos. In addition, it is alleged that monthly safety meetings are held, at which time the importance of personal safety is reaffirmed. Employees are instructed to wear protective masks, promptly clean up asbestos spills, and dispose of such spills properly.

The Agency alleges that if instructions were given, they are not being followed properly. Workers were noted in exposed areas without proper masks, and housekeeping was generally poor.

Rule 621 (b) states that each employee

> "shall complete a course of instructions on the potential hazards of exposure to asbestos fibers, including the precautions that must be observed to prevent or restrict the dispersion of asbestos into the environment."

The rule does not detail what such a course shall consist of, nor does this rule make it a violation not to comply with such instructions. It is the obvious intent of such rule to encourage compliance, which may not have been done in this instance. The proposal for settlement significantly tightens up on the compliance with such instructions and will be accepted by the Board. However, the Board finds that the letter of the law (621 [b]) was complied with in this particular instance, and the Board will dismiss such charges. The outcome of this charge could have been different, had more evidence been generated as to the actual conduct of such training. Charge dismissed.

3. Rule 621 (c). Facts were presented to the Board so as to allow us to render an equitable decision.

Respondent alleges that lockers are provided for employees in which to place their clothes. Such operators are instructed to change clothes upon arrival and departure from work. Respondent further alleges that no employee was ever noted leaving the plant with visible asbestos fibers on his clothing.

The Agency alleges that the lockers were located in the same room as the mixer (asbestos), which would allow airborne fibers to reach employees' clothing, and that supervision was not adequate.

Rule 621 (c) specifically mentions that "Facilities shall be provided and procedures instituted and supervised..." (emphasis added). It is the finding of the Board that the facilities provided (single lockers) and the supervision given were totally inadequate to prevent the removal from the site of asbestos fibers. The proposal for settlement will solve this problem; however, the violation will be affirmed.

4. Rule 621 (d). Respondent admits to this charge on both September 7, 1973, and February 19, 1974. These are two Agency inspection dates. The Board feels that this was a continuing violation and finds the charge valid.

5. Rule 652. The Agency withdraws this charge.

6. Rule 203 (f)(1). Respondent admits this charge, at least on February 14, 1974, but states it was due to mechanical failure which led to a spill. This violation should have ceased because the new unloading facility is now operable. Charge affirmed.

7. Rules 103 (a)(1), 103 (b)(2), 622, and Section 9 (b). The above rules were violated by Respondent by its own admission, and such charges shall be affirmed.

Respondent and the Agency, in an attempt to settle the instant case, have suggested a compliance plan which will resolve all violations. These items (A [1-12] and B) can be found in detail on pages 23-25 of the Stipulation. Basically, Respondent agrees to better housekeeping, ordering and installing protective coverings, intensifying its employee training and supervision, installation of separate lockers, submission of reports, and notifying the Agency of delays. Respondent also agrees to pay a penalty of $6,000 for violations found. The only part of the above plan which will not be completed by the date of this Order is the construction of a new change room, which is anticipated for completion by February 1, 1975.

The Board finds the agreed-to settlement to be equitable in the instant case, and the penalty to be reasonable in light of the violations, and will accept it in full.

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. Respondent, Georgia-Pacific, is found to have been in violation of Rules 621 (c), 621 (d), 203 (f)(1), 103 (a)(1), 103 (b)(2), and 622 of the Air Rules, as well as Section 9 (b) of the Environmental Protection Act.

2. Respondent is found not guilty of violating Rule 621 (b) of the Air Rules.

3. Alleged violations of Rules 621 (a) and 652 of the Air Rules are dismissed.

4. Respondent shall pay to the State of Illinois the sum of $6,000 within 30 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.

5. Respondent shall carry out in full Items 1 through 12 listed in Paragraph 45 (A) of the agreed-upon Stipulation for settlement.

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 3rd day of January, 1974, by a vote of 5 to 0.

Christan L. Moffett