ILLINOIS POLLUTION CONTROL BOARD
June 9, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#71-31
v.	)	
	)	
SOUTHERN ILLINOIS ASPHALT CO., INC.	)	

LARRY P. EATON, SPECIAL ASSISTANT TO ATTORNEY GENERAL,
FOR ENVIRONMENTAL PROTECTION AGENCY

CRAIG & CRAIG, MOUNT VERNON, ILLINOIS,
FOR SOUTHERN ILLINOIS ASPHALT CO., INC.

OPINION OF THE BOARD (BY MR. LAWTON:)

Complaint was filed by the Environmental Protection Agency against Southern Illinois Asphalt Co., Inc., Respondent, alleging that on or about August 20, 1970, Respondent installed an asphalt plant at McLeansboro, Illinois, without a permit issued by the Environmental Protection Agency, in violation of Section 9(b) of the Environmental Protection Act ("Act") and Rule 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution, continued in effect pursuant to Section 49(c) of the Act, and that on or about September 14, 1970, Respondent operated an asphalt plant in violation of Section 9(b) of the Act.

Respondent's answer denies the allegations of the complaint and sets up various affirmative defenses as follows:

1. That failure to obtain the permit was not the fault of Respondent, but rather that of the equipment supplier.

2. That Respondent lacked intent to violate the Regulations.

3. That the Act is unconstitutionally vague.

4. That the Act and Regulations promulgated thereunder constitute an improper delegation of legislative and judicial authority and are, therefore, unconstitutional.

5. That the Act and Rules so foreclose one charged with a misdemeanor of a jury trial by a court, and are, therefore, unconstitutional.

6. That the penalty provisions under the Act constitute a denial of equal protection of the laws.

7. That fines for violation of the Act can only be sought by the State's Attorney or the Attorney General and the imposition of a fine by the Pollution Control Board constitutes an unconstitutional usurpation of legislative and judicial authority and is, therefore, unconstitutional.

8. That the emissions of the plant are consistent with applicable regulations and that Respondent ceased operating the plant before the filing of the complaint and that Respondent's operation does not adversely affect the health, general welfare and physical property.

9. That there is a need for Respondent's product and that Respondent employs or engages local business people.

10. That it has installed air pollution control equipment at a cost of $82,000.00 and that insistence on further expenditure would be unreasonable.

We find Respondent guilty of violating Section 9(b) of the Act and Rule 3-2.110 of the Rules and Regulations governing the control of air pollution. We order Respondent to cease and desist all operation of its plant at its present location without a permit. We impose a fine of $5,000.00 on Respondent, for its unexcused failure to obtain a permit. We find Respondent not guilty of the charge of operating an asphalt plant without a permit because no regulations had been adopted requiring an operation permit as distinguished from an installation permit. All constitutional arguments raised by Respondent have been previously disposed of in prior rulings of this Board, and do not require extended discussion. See Environmental Protection Agency v. Cooling, #70-21, dealing with the subject of vagueness of the statute. See Environmental Protection Agency v. Container Stapler Corporation, #70-18, distinguishing the present proceeding from a misdemeanor prosecution. See Environmental Protection Agency v. Granite City Steel Company, #70-34, resolving in favor of the Board all contentions relative to delegation of legislative and judicial authority. See Environmental Protection Agency v. Modern Plating Corporation, #70-38, with regard to all aspects of the capability of the Board to impose penalties by way of fines and

to do so without the need for trial by jury. All constitutional contentions are lacking in merit and do not constitute grounds for a judgment in favor of the Respondent.

Respondent's allegations of installation of air pollution abatement equipment, the need for Respondent's product, the employment of local personnel and the purchase of local products may be considered by way of mitigation if, indeed, evidence exists to support such allegations, but in no way constitute a defense as to whether Respondent obtained an installation permit as required by law, nor does the December application for a permit serve as a defense for failure to obtain one in September when the installation was, in fact, completed. Violation of Section 9(b) of the Act and Rule 3-2.110 are conceded by Respondent's admission that the installation of the entire operation was made without a permit (R.123,124).

All that remains to be considered is whether there are any circumstances by way of mitigation; what, if any, impact on the community resulted from Respondent's unauthorized installation and what factors should be considered in structuring the Order of the Board.

Respondent moved the present plant from Missouri to the McLeansboro site in July of 1970 and completed installation by September 14, 1970 (R.117)(Regendhardt).

Respondent ceased operation in December of 1970. The plant is not presently in operation.

The unit installed mixes rocks, sand and petroleum materials in a rotary kiln under heated conditions to produce asphalt concrete. The heat source is an oil burner operating 24 hours a day. The unit is equipped with a primary cyclone and wet scrubber of 98% efficiency (R.79). The plant has a production capacity of approximately 200 tons an hour and emits an estimated maximum of 41 pounds of particulates per hour though generally, not in excess of 11 pounds per hour. No charge has been made on the quantity of emissions and the precise extent of the emissions is not directly in issue. The asphalt produced is used for road-building, parking lots and related installations. The present site was selected because of the availability of water and access to the railroad. While various witnesses characterized the operation as clean, it is undisputed that dust, particulates, steam, smoke and odors emanated from the plant. Trucks coming to and from the plant created a substantial degree of noise and dust which constituted a severe burden on the community.

Respondent employs approximately 50 persons and has a weekly payroll of approximately $16,000.00. The oil burner is operated on a 24-hour basis emitting a discernible and disagreeable odor. Homes are located as close as 100 feet from the plant and approximately 25 of them within a block of the plant. The plant ceased operation in December, not as a consequence of action by the Environmental Protection Agency but rather, upon the termination of its normal operating period, and has not been re-opened since.

Respondent's principal defense is the feeble excuse that they thought the contractor would obtain the permit (R.102,103,135). There is no evidence what follow up was made by the Respondent to determine if, in fact, such application was made. Obviously, Respondent's indifference to ascertain the true status of the permit application cannot serve as an excuse for its dereliction. We have previously held that responsibility to obtain that which is needed and to do that which is required in order to comply with the law is that of the operator and that negligence of materialmen or contractors in no way absolves the operator. See Malibu Village Land Trust v. EPA, #70-45. The present case is illustrative of the consequences of such indifference and calls for the imposition of a penalty. Nor is the Attorney General's letter, Ex. 1, stating that the plant is well-operated any excuse for the failure to obtain the needed permit or a defense in law to the violation. Likewise, evidence of cost to be assumed by Respondent in the event the plant is moved, in no way serves in mitigation.

Section 9(c) 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. Air pollution is defined, among other things, as the presence in the atmosphere of contaminants in sufficient quantities to unreasonably interfere with the enjoyment of life or property. It is manifest from the testimony that Respondent's operation, even if conducted within the emission limits of the regulations, would constitute a severe nuisance and greatly interfere with the enjoyment of life and property of the residents in the immediate vicinity. It is our belief that the present location of the plant is inappropriate for the operation of an asphalt plant and we urge the Environmental Protection Agency to give consideration to this element when action is taken on the pending permit application. A permit should not be granted under circumstances where its immediate use would constitute a violation of the Act.

The evidence of residents of the area supports this position. George Reuls lives within 350 feet of the plant. He testified that southwesterly winds blew dust, smoke and exhaust from the plant over his property, that truck traffic generated noise and dust, that the smoke appeared as a dense fog, so thick in the morning that the sun

would not be seen. (R.170), and that in his opinion, his real estate values have decreased. He testified that the operation of the plant precluded the use of his yard for outdoor activities and that approximately 100 homes were affected by the operation.

Ray Smith testified that he lived 100 feet from the plant and that when smoke comes down "you have to hold your nose to go outside." Noise, both from the operation of the plant and the truck traffic affected his sleep. Roy Cole testified that dust and dirt generated by the trucks covered his porch and that noise from the trucks prevented sleep and that the use of the outside portion of his property was foreclosed for recreational activities. Paul Irvin testified that he lives near the plant and that he has an asthmatic condition and that the dirt and dust generated by the operation of the plant and by the trucks had an adverse effect on him. Riley Mangus testified that he suffered from emphysema which was worsened after the plant began operation.(R.171-220).

However, the Environmental Protection Agency did not charge Respondent with the causing of air pollution either under the Statute or Regulations. Accordingly, our Order must be framed only in terms of the failure to obtain a permit for the installation of the plant. We direct Respondent to cease and desist the operation of its plant at its present location without a permit and assess a penalty in the amount of $5,000.00 for its failure to obtain the required permit.

This opinion constitutes the Board's finding of fact and conclusions of law.

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD:

1. That Respondent cease and desist the operation of an asphalt plant at its present location without a permit;

2. That Respondent be assessed a penalty of $5,000.00 for its failure to obtain a permit for the plant, as required by statute and regulation.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 4th day of June, 1971.