ILLINOIS POLLUTION CONTROL BOARD
September 30, 1971

A. E. STALEY MFG. CO.	)	
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	)	
v.	)	# 71-174
	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

T. W. Samuels and J. E. Jackson, for A. E. Staley Mfg. Co.
John S. McCreery, for the Environmental Protection Agency

Opinion of the Board (by Mr. Currie):

Staley operates a very large vegetable processing plant in Decatur (R. 17-18). Its Air Contaminant Emission Reduction Program (Acerp) for bringing into compliance with the particulate regulations its numerous boilers and those of its over 100 process sources not already so controlled was approved in late 1968 or early 1969 (Petition, p. 3, as verified R. 17). The original program contemplated the installation of mechanical collectors on several of the boilers, but a revised program was soon after approved calling for complete conversion to natural gas, which would eliminate sulfur dioxide as well (ibid; R. 26-27). Unfortunately the much publicized gas shortage has interfered; Staley has lost much of the gas it had been promised (R. 28-29), through no fault of its own, and has embarked on a crash program to install mechanical collectors to achieve compliance by August 31, 1972 (R. 30-34)-- only eight months after the date approved for the gas conversion (R. 27).

We see no conceivable reason for disapproval of this program. The Agency, which agrees with the grant (R. 58), rather surprisingly accuses the company of having pursued a "phantom program" (R. 635), but we find this characterization completely unwarranted. It is not Staley's fault that its gas supplier cannot meet its needs because of a widespread shortage. We think the company has done the best it could to salvage an unfortunate situation and is to be commended for commencing the revised program without awaiting conclusion of this case. A money penalty would be entirely inappropriate on this issue, and a shutdown with consequent loss of hundreds of jobs would impose an arbitrary hardship in relation to the continuance of these emissions for an additional eight months.

The Agency's recommendation, filed on the first day of the hearing (R. 4), raised numerous other issues with respect to

operations not covered by the variance petition. The company strenuously objected, contending that it was entitled to limit the issues by its drafting of the variance. We have held before that the Agency is within its rights in asking that we condition a variance upon the correction of other pollution sources within the same plant. See Greenlee Foundries Co. v. EPA, # 70-33 (March 17, 1971); Standard Brands, Inc. v. EPA, # 71-3 (April 28, 1971). This practice is supported, as the Agency says, by the interrelated effects of emissions from several nearby sources; it is supported by the statutory policy of promoting correction of pollution problems; it is supported by the sound procedural policy of encouraging counterclaims to settle an entire controversy in a single proceeding to avoid multiple litigation and delay. We have had occasion before to caution the Agency, however, that a petitioner is entitled to reasonable notice of new issues presented in its recommendations, and it is plain that such notice was not afforded in this case. We therefore hold that the company must be given an opportunity to respond to the Agency's charges with respect to other sources within the plant.

The Agency was allowed, over objection, to introduce considerable testimony as to other sources. First EPA attempted with no success to show that certain process sources might not be in compliance with the particulate regulations. Neither stack tests nor emission estimates were presented to support these contentions. The most that can be said is that there are some sources for which no emission data were submitted by Staley and that some apparent maintenance problems observed by an EPA inspector on a cursory trip through the plant (R. 254-74, 279-80) have been corrected (R. 463-73). The company has already given the Agency a full revised set of emission data (R. 61, 657), which goes beyond regulation requirements. Staley testified without contradiction that all its process sources had been in compliance with the particulate regulations for some time. (Petition, p. 3, as verified R. 17; R. 25, 59, 61). There is no point in pursuing this question further unless the Agency can come up with specific allegations of violation.

A special issue arises with respect to six corn dryers that admittedly do not meet the general particulate requirement (R. 59, 357). Staley relies on the special provision allowing up to 0.75 grains/scf from such equipment upon a showing of necessity. Staley's evidence shows that its dryers all emit less than 0.3 (R. 365), and as we read the section that is therefore all they are entitled to emit. But the place for the Agency to show, as it said it wished to show (R. 13), that the regulation is itself is too lenient is in the pending proceedings to tighten the emission standards. In light of the several progress reports submitted by the company (R. 358-9) we do not think it has waived the protection of the present rule.

There is finally the question of odors. Several witnesses testified to considerable and objectionable odors from Staley's (R. 210, 511, 563-64, 571, 576, 578, 580, 593), while others said there had been great improvement or that there was no problem (R. 315, 456, 516, 521-22, 524, 539, 561, 590, 602, 616, 620, 623). That we have no numerical odor standard (R. 648) does not end the inquiry; that is what the statutory ban on air pollution--unreasonable interference with the enjoyment of life or property--is in large part about. We have held (Moody v. Flintkote Co., # 70-36, Sept. 2, 1971) that air pollution is proved if the evidence shows a significant interference with enjoyment of life or property that can be corrected by employment of technology that is available at reasonable cost.

We think the evidence here suggests an interference with the enjoyment of life and property, subject to further rebuttal by the company. There also was evidence that equipment could be purchased to incinerate the odoriferous matter emitted from corn dryers (R. 368, 372-73, 375, 391, 395-96, 399, 401, 412-15, 433, 437, 443). The company elicited that there have been no commercial applications of this technology in the corn industry (R. 399, 419), and there is no evidence of cost in the record. But we think the company has the obligation to show that the technology cannot be had at reasonable cost or that it will not do the job. It cannot be a complete defense that no one has yet put the technology to commercial use; if it were we should encounter a vicious cycle in which technology was not employed because not required and not required because not employed.

Because of the late notice we think Staley should be given a further opportunity to present evidence as to why it should not be required to employ incineration or some other method to reduce odors, and if necessary to put additional questions to the Agency's witnesses. Another hearing will therefore be held in the proceeding. We do not believe any purpose would be served by requiring EPA to present the same evidence again. We therefore construe the Agency's odor case as a countercomplaint and schedule an additional hearing at which the earlier relevant testimony will be incorporated. Staley's participation in that hearing will be a condition of today's variance.

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

ORDER

A. E. Staley Mfg. Co. is hereby granted a variance from the particulate regulations of the Rules and Regulations Governing the Control of Air Pollution until August 31, 1972, to permit the installation of equipment as described in the record to bring its boilers into compliance with those regulations, on the following conditions:

1) Within 35 dyas after receipt of this order, Staley shall post with the Agency a bond or other security in the amount of $100,000 to secure compliance with this order;

2) A further hearing shall be held on the Agency's countercomplaint regarding odors, at which Staley may present additional evidence as to odors and as to the technical feasibility and economic reasonableness of odor control, including but not limited to incineration;

3) Staley shall file detailed quarterly progress reports with the Agency and with the Board, commencing January 1, 1972;

4) Failure to adhere to the conditions of this order or to the program herein approved shall be grounds for revocation of this variance.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 30 day of September, 1971.

Regina E. Ryan