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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ALTON PACKAGING CORPORATION,)
Petitioner,)
v.) PCB 85-145
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.

N O T I C E

TO:

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENT'S POST-HEARING BRIEF of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

BY: William D. Ingersoll
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DATE: March 26, 1986
Agency File #: 7676

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ALTON PACKAGING CORPORATION, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	PCB 85-145

RESPONDENT'S POST-HEARING BRIEF

INTRODUCTION

On August 27, 1985, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency") denied Petitioner's operating permit application No. 72120426. Petitioner then filed its Permit Appeal on October 1, 1985. A hearing was had on this matter on January 6, 1986 in Alton, Illinois. A decision in this matter has been waived by Petitioner to and including April 25, 1986.

The Agency concurs generally with Petitioner's recitation of the facts and the permit history, but must point out a couple of discrepancies. First, the reference to burning low sulfur coal is hardly applicable here. Coal which emits at a rate of 4.9 lb. SO_2/MM BTu to 6.2 lb. SO_2/MM BTu can hardly be considered low sulfur coal. Also, the December 25, 1980 permit application is in fact in the Agency Record. It is part of the attached items in Exhibit 24.

I. The Effect of The Emission Limitation Was Dependent Upon The Board's Dismissal in PCB 83-49. The Effect of The Dismissal Has Been Stayed By the Fifth District Appellate Court.

Petitioner discusses its arguments for a stay before the appellate court and then submits that "the first ground for the IEPA's denial of Alton's permit herein is no longer valid." The Agency does not agree with this jump in logic. The Agency merely admits that the court granted a stay of the effect of the Board's dismissal of PCB 83-49.

The filing of the variance petition in that case provided Petitioner with an automatic stay, pursuant to Section 38, of the effect of the emission limitation. The dismissal removed that stay and now the effect of the dismissal has been stayed. That is not to say that the Agency's first reason for denial is invalid, but merely that it should not be considered here. The reasonableness of the Agency's permit denial should only be determined by reviewing the second reason for denial on its own.

II. Petitioner's Operation Of Its Boilers 6 and 7 Caused Or Contributed To A Violation of The Primary Ambient Air Quality Standard for Sulfur Oxides And Therefore The Permit Denial Was Proper.

The Permit Denial letter of August 27, 1985 indicated in its reason number 2 that the operation of Petitioner's Boilers 6 and 7 was a major contribution to a monitored violation of the primary

24-hour SO_2 standard during November, 1984. The letter then continued that "(b)oilers 6 and 7 thus may cause violations of 35 Ill. Adm. Code 201.141 and 243.122(a)(2)."

35 Ill. Adm. Code Section 201.141 provides:

> No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attaninment or maintenance of any applicable ambient air quality standard.

35 Ill. Adm. Code Section 243.122(a)(2) provides that one of the primary ambient air quality standards for sulfur oxides measured as sulfur dioxide is "(a) maximum 24-hour concentration not to be exceeded more than once per year of 365 micrograms per cubic meter (0.14 ppm)."

(Please note that in the note at the bottom of page 6 of Petitioner's brief, the standard is misstated as saying that two excursions within a 30-day period constitute a violation. Obviously it is two excursions within a one-year period. In this case they just happened to occur within the same calendar month.)

Air quality standards were established to protect public health and welfare. Primary standards define levels of air quality which have been determined to be necessary to protect the public health. Further, these standards are legally enforceable against anyone causing or contributing to a violation of those standards. (35 Ill. Adm. Code Section 243.102)

We are not here dealing with some esoteric discussion of available technology. We are dealing with the protection of the health of the people of Alton, Illinois. Maybe the ambient air quality standards are not perfectly designed, but their intent is clear. The citizens' health demands that these levels not be exceeded and proof must be provided that a permittee's operations will not cause these levels to be exceeded.

Section 39 of the Act dictates that the Agency shall "issue such a permit upon proof by the applicant that the facility, equipment... will not cause a violation of this Act or of regulations thereunder." Therefore the Agency could not reasonable issue a permit for the operation of boilers when the Agency does not have proof that the operation of those boilers will not cause violations. It is not the duty of the Agency to first prove that violations will surely occur before it can refuse to issue a permit.

A. The Air Quality Excursions

As indicated above, the primary ambient air qualtiy standard for SO_2 is defined in terms of micrograms per cubic meter. The 0.14 ppm level is in parentheses and is provided for reference purposes.

There were two excursions of the primary 24-hour standard in November of 1984. The first occurred during a 24-hour period on November 6 and 7. During that period the maximum 24-hour average was 0.148 ppm. (Agency Record - Exhibit 6; hereinafter abbreviated as

"A.R. - Ex.") The second excursion occurred during a 24-hour period on November 25 and 26. During that period the maximum 24-hour average was 0.159 ppm. (A.R. - Ex. 6)

Petitioner mistakenly indicates 1.45 ppm on page 6 of its brief when in fact 0.145 ppm was indicated in the cited testimony. Petitioner is correct that the Agency "monitors for SO_2 in the atmosphere on a regular basis." Also, these were the only two excursions in the Agency Record. Petitioner tries to minimize the importance of the excursions, but public agencies charged with protecting the health and welfare of our State's citizens must afford these excursions great importance.

B. The Agency Record Is Complete.

Petitioner tries to confuse matters here by inserting a red herring issue about the completeness of the Agency Record.

The Agency sent a letter to Petitioner's Mr. Pyatt on July 22, 1985. This letter was notifying Petitioner of its apparent noncompliance and included the modeling analysis indicating Petitioenr's culpability in the November, 1984 excursions. The letter went on to say that the noncompliance could lead to an enforcement action. (See A.R. - Ex. 4 and 5.) Petitioner's Mr. Pyatt responded by letter of August 6, 1985 (A.R. - Ex. 3) requesting additional information and saying further that there was no recurrence of the excursions and that "we are aware of any additional steps that require action at this time."

Petitioner, at page 7 of its brief states that "(t)he IEPA did not provide Alton with any of the requested data..." There is no support for this statement anywhere in the record in this matter and it should therefore be ignored. No followup response from the Agency was in the Agency Record but that is not to say that no response was ever made. In fact, counsel may be well advised to ask Mr. Pyatt to search his files for an August 19, 1985 letter with attachments from Mr. John Shrock of the Agency's Air Quality Planning Section to Mr. Pyatt.

Further it is interesting that Petitioner seems to claim the truth of its statement that "(a)t this time we do not have sufficient information to draw any final conclusions." (Petitioner's Brief - p. 7) In permit appeals the burden of proof is on the petitioner. (Section 40(a)(1) of the Act) The author of the letter containing that statement, Mr. Edward M. Pyatt, was in fact present at the hearing. (See Reporter's Transcript - p. 3; hereafter abbreviated as "R.T. - p.") Mr. Pyatt did not testify, nor did any of the others present who are affiliated with Petitioner. If Petitioner wishes to now make these rash allegations, it should have provided testimony to provide a basis to now use them in its brief.

Mr. Pat Dennis of the Agency's Air Permit Section was the person who actually made the permitting decision to recommend that the permit be denied. Mr. Dennis testified that "(w)hatever material was relevant to the permit decision was included." (R.T. - p. 85)

C. The 0.148 ppm SO_2 Concentration Monitored on November 6 and 7 Was In Fact An Excursion.

Petitioner first states that nothing below 0.145 ppm is an excursion. Then goes on to say that within 95% probability the recorded value would be between 9% low and 5% high. Then Petitioner reduces the 0.148 ppm figure by 5% to indicate that an excursion did not take place. This analysis of Mr. Kolaz' statistics discussion is faulty.

Mr. Kolaz merely testified (R.T. - p. 35) that the 95% probability limits were 9% low to 5% high. This only means that a statistician would be confident at a 95% level that the reported value was within those limits of the actual value. It is not appropriate to then assume that a reported value would be 5% high and reduce it by that amount. Mr. Kolaz just expressed his statistical confidence level.

Mr. Kolaz also testified (R.T. - p. 33 and p. 52) that under USEPA guidelines the reported data is not to be corrected. Mr. Kolaz also testified (R.T. - pp. 39-40) that the Alton SO_2 monitor has performed satisfactorily and all of his testimony showed that the monitor was operating well within USEPA guidelines.

Petitioner finally claims that the exceedance was de minimus. The Agency may not take any violation of ambient air quality standards so lightly. As was argued above, primary standards are necessary to the protection of public health. When these are exceeded there is cause for alarm and this is not to be ignored because the exceedance is not by a large amount.

D. The 0.148 ppm SO_2 Level Reported On November 6-7 Was Accurate To Well Within Acceptable Limits

As mentioned in part C above, the reported values are not to be corrected according to USEPA guidelines, and the Alton SO_2 monitor was operating well within acceptable limits. Even though, Mr. Kolaz did undertake an evaluation of the performance of the Alton monitor.

Petitioner points to the results of the precision check on the Alton monitor on November 1, 1984, the last one before the November 6-7, 1984 excursion, and claims that it shows that the monitor over-reported SO_2 values on November 6-7. The precision checks indicated as follows:

October 24, 1984	-5.5%
November 1, 1984	+5.5%
November 8, 1984	-3.3%
November 15, 1984	-6.6%
November 21, 1984	-6.6%
November 27, 1984	-5.5%

(R.T. - p. 50)

Obviously, the November 1 value was an anomaly within the range of precision check values. Mr. Kolaz further investigated this by reviewing the strip chart from the Alton SO_2 monitor. He determined that the base line had drifted up just prior to the precision check, and after twelve hours it drifted back down again. This is not an unusual occurance, and does not affect the accuracy of the reported data (R.T. - p. 50) This just means that the base line reference had drifted above zero for some twelve hours and during that time caused slightly higher readings. However, the drift had obviously

corrected itself long before the excursion of November 6-7. Even though the anomaly was investigated and explained, the monitor's performance was still well within limits and would be corrected as per guidelines.

E. The Agency Modeling Analysis Does Indicate Culpability By Petitioner And May Properly Form The Basis For Further Conclusions, Including Permit Denial.

The Agency caused a modeling analysis of the November, 1984 SO_2 excursions in Alton to be performed. (A.R. - Ex. 5) This analysis concluded that the "likely cause of the high SO_2 values was found to be the emissions from the coal boilers at Alton Packaging."

Petitioner complains that the analysis was not designed to be predictive of the location, time, and extent of future violations. The Agency admits that Mr. Shrock testified to that effect. (R.T. - p. 19, p.62) However, Mr. Shrock also testified that even though the analysis was not designed to predict what emission levels would protect air quality, some conclusions about the future could be drawn. (R.T. - p. 62)

Mr. Shrock is a well-qualified expert in the dispersion modeling field. He is educated and has more than nine years of experience in this very specialized field. (R.T. - pp. 57-58) This expertise would allow Mr. Shrock to make certain conclusions about the future based upon his culpability analysis. He concluded that future excursions were possible if Petitioner were allowed to continue operations as

they were. (R.T. - p. 63, A.R. - Ex. 5) This conclusion was based primarily on the facts that the meteorological conditions during the excursions were not unusual and that other SO_2 sources which would normally be expected to impact the monitor were not operating or operating at well below allowable limits. (R.T. - p. 63, A.R. - Ex. 5)

Petitioner makes a misstatement of a legal principle on page 10 of its brief. It says that the Agency must not only demonstrate that an excursion occurred, but also that they will occur in the future. Petitioner is mistaken. Section 39 of the Act provides that the Agency shall issue a permit "upon proof by the applicant" that violations will not be caused. Further, Section 40 places the burden of proof in this proceeding on Petitioner.

In this case we have a report of monitored excursions, including underlying data prepared by experts in that field. That report was then used by Mr. Shrock, an expert in his field, to make a modeling analysis of the excursions. Mr. Shrock's report of the analysis, including his expert conclusions, was then reviewed (along with the monitoring report) by a permit analysis engineer with considerable expertise in the field of coal fired boilers. (R.T. - p. 78) That engineer, Mr. Dennis, determined that the results and conclusions of those reports were sufficient to recommend denial of a permit. (R.T. - p. 82)

CONCLUSION

The reports were well founded and based on thorough and expert

analyses by qualified personnel. The reliance on these reports by other experts in drawing their conclusions is entirely reasonable in the field of environmental science.

Petitioner has done nothing to show that the permit review was faulty or unreasonable. In fact, Petitioner did not put on any of its available experts to indicate that the Agency experts were incorrect. In fact, three experts affiliated with Petitioner were present at the hearing and none was called to present evidence in a case where the burden is squarely on Petitioner.

The Agency respectfully requests that the Board affirm its permit denial of August 27, 1985.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: William D. Ingersoll
William D. Ingersoll

Date: March 26, 1986

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STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached

RESPONDENT'S POST-HEARNG BRIEF upon the person

to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk
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and sending it by first class mail from Springfield, Illinois, on

March 26, 19 86, with sufficient postage affixed.

Deborah M. Stoll
Deborah M. Stoll

SUBSCRIBED AND SWORN TO BEFORE ME

this 26th day of March, 1986.

Barbara K. McGee
Notary Public

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