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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF OCCIDENTAL CHEMICAL CORPORATION, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB No. 82-177 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the assessment of a $250 civil penalty for the alleged violation of Section 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock (presiding), Chairman, and Lawrence J. Faulk, at a formal hearing in Lacey on February 15, 1983.

Respondent's request to hold an informal hearing was opposed by appellant. The Board held a formal hearing to provide for a record in the event of a challenge in any future proceeding.

Respondent was represented by its attorney, Keith D. McGoffin;

appellant was represented by its attorney, Michael R. Thorp. Gene Barker recorded the proceeding.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto, which are officially noticed.

II

Appellant Occidental Chemical Corporation owns and operates a chemical plant in Tacoma, Washington. Among other things the Tacoma plant produces a 50 percent sodium hydroxide solution. This solution is commonly known as caustic soda, which is used in the manufacture of paper pulp, viscose rayon, soap, dyes, drugs, cosmetics, adhesives and chemical intermediates. It is also used in bleaching, petroleum refining, fruit and vegetable peeling, textile processing and other industrial uses.

III

The production of caustic soda begins with sodium chloride (salt) being dissolved with water and treated with chemicals to precipitate unwanted impurities. These impurities are then settled out in clarifier tanks leaving a pure sodium chloride brine. This brine is then placed in an electrolytic cell where electric current converts the sodium chloride brine into chlorine, hydrogen and a dilute

solution of caustic soda known as cell liquor. This cell liquor passes from the electrolytic cell through cell liquor headers to storage in one of three cell liquor tanks.

The cell liquor is then pumped from the cell liquor tanks through cell liquor headers to the caustic building and is concentrated in nickel evaporators in to a strong solution of caustic soda in water (50 percent). The 50 percent solution of liquid caustic is then pumped from the caustic building to large storage tanks until needed for shipment.

IV

On September 15, 1982, at approximately 6:50 a.m., the #3 cell liquor tank collapsed. At that time the evaporation process was in operation in the caustic building and was being fed with cell liquor from one of the other cell liquor tanks. Cell liquor tank #3 did contain cell liquor but was not then feeding the caustic building. Cell liquor tank #3 could not feed the caustic building because a salt plug had formed in the cell liquor header that leads from tank #3 to the caustic building.

When the #3 cell liquor tank collapsed, a number of pipe lines adjacent to the tank were ruptured. At least one cell liquor header was severed causing a spill of cell liquor. In addition, a line carrying hydrochloric acid ruptured causing a breakdown in the pH control system. As a result, the pH of water being discharged through an Occidental Chemical Corporation outfall began to exceed pH limits. Finally, at the time of the tank collapse, a chlorine barge was being

filled with liquid chlorine. Since the header carrying the chlorine was near the #3 cell liquor tank, appellant was concerned that the header might have been damaged in the original tank collapse or might be damaged if the tank collapsed further.

V

With the collapse of the #3 cell liquor tank, a number of emergency actions were required. The discharge of cell liquor through the severed cell liquor hearder had to be stopped. The pH of the discharge through the outfall had to be returned to normal. Foam which had appeared in the adjacent Hylebos Waterway as a result of the discharge of cell liquor to the waterway had to be cleared. These actions occupied the attention of the plant staff for the next several hours following the incident.

At approximately 8:20 a.m., the salt plug in the cell liquor header which had stopped the flow of cell liquor from #3 cell liquor tank broke and cell liquor began flowing to the ground underneath the tank. At this time a decision was made to shut down the caustic unit in the caustic building so that steps could be taken to isolate #3 cell liquor tank.

VI

In order to shut down the caustic unit it became necessary to also shut down #3 boiler. Therefore, between 8:20 a.m. and 8:30 a.m., the boiler operator began cutting the burners in the #3 boiler. It took approximately 10 to 15 minutes to completely shut the boiler down. During this time some smoke was generated by the boiler causing the

opacity excursion. The generation of smoke in this manner is normal during the shutdown of one of these boilers and is unavoidable. At approximately 8:48 a.m. a call was placed to PSAPCA notifying them of a shutdown of the #3 boiler.

VII

On September 15, 1982, at about 8:32 a.m. while the above-mentioned emergency procedures were underway, respondent inspector's attention was drawn to the black smoke emmiting from the main boiler stack of Occidental Chemical Corporation at 605 Alexander Avenue, Tacoma, Washington.

After positioning himself approximately one-half mile south of the boiler stack, he observed the plume (8:32-8:45 a.m.) and recorded opacities ranging from 30 percent to 100 percent for 7 minutes of 13 minutes observed. The inspector served notice of violation No. 18098 at approximately 9:16 a.m. on September 15, 1982, to Lyle Feller, assistant technician for Occidental Chemical Corporation. On September 15, 1982, respondent also requested a full report as outlined in Regulation I, Section 9.16. On September 23, 1982, respondent received the requested report which met the reporting requirements of the provision.

VIII

Respondent determined that reporting of an upset condition under terms of Regulation I Section 9.16 could not be used as a defense by appellant because the pollution event was not reported immediately to the Agency. On September 28, 1982, respondent mailed a notice and

order of Civil Penalty (No. 5639) of $250 for the alleged violation of Section 9.03(b)(1) of respondent's Regulation I. From this appellant appeals.

IX

Section 9.03(b)(1) of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period totaling more than 3 minutes in any one hour which is of an opacity equal to or greater than 20 percent. Section 3.29 of Regulation I provides for a civil penalty of up to $250 per day for each violation of Regulation I. Appellant has on previous occasions violated Regulation I, for which penalties have been assessed.

IX

Section 9.16 provides:

> Emissions exceeding any of the limits established by this Regulation as a direct result of start-ups, periodic shutdown, or unavoidable and unforeseeable upset or breakdown of process equipment or control apparatus, shall not be deemed in violation provided the following requirements are met:
>
> (1) The owner or operator of such process or equipment shall immediately notify the Agency of such occurrence, together with the pertinent facts relating thereto regarding nature of problem as well as time, date, duration and anticipated influence on emissions from the source.
>
> (2) The owner or operator shall upon the request of the Control Officer, submit a full report including the known causes and the preventive measures to be taken to minimize or eliminate a re-occurrence.
>
> (Emphasis added.)

X

Any Conclusion of Law which should be deemed a Finding of Fact is

hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

Appellant violated Section 9.03(b) of Regulation I as alleged September 15, 1982, by causing or allowing an emission of black smoke in excess of the limits established by the regulation.

II

The black smoke emmanating from the main boiler's stack on the morning of September 15, 1982, was the direct result of unavoidable and unforeseeable failure or breakdown of the #3 cell liquor tank and the subsequent shutdown of #3 boiler. Under the press of an emergency, appellant was able to report a breakdown to governmental regulatory authorities, including respondent before respondent's inspector walked on to the plant site. The time which elapsed from the start of cutting the burners to the #3 boiler to the telephone call to respondent was reasonable in light of the multiple pollution events and the time it takes to make reports and completely shut down the boiler. We conclude that appellant should be excused of any violation under terms of Regulation I, Section 9.16. Accordingly, the $250 civil penalty should be vacated.

IV

Appellant's contention that the 20 percent opacity standard contained in 9.03(b) is invalid is without merit.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The $250 Civil Penalty (No. 5639) is vacated.

DONE this 11th day of ~~March~~ April, 1983.

POLLUTION CONTROL HEARINGS BOARD

LAWRENCE J. ~~FAULK~~, Member

GAYLE ROTHROCK, Chairman