ILLINOIS POLLUTION CONTROL BOARD October 17, 1972

FREEMAN COAL MI	NING CORP.	•)	
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v.) #	72-306
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ENVIRONMENTAL PI	ROTECTION	AGENCY)	

Opinion of the Board (by Mr. Currie):

A year ago we approved Freeman's program for bringing air cleaning tables at its Orient #3 mine into compliance with regulations governing particulate emissions to the air (#71-78, 2 PCB 709 (Oct. 28, 1971)). Because the statute requires annual reconsideration of variances, Environmental Protection Act, § 36(b), the variance was granted only until October 27, 1972, subject to extension, upon proper showing of satisfactory progress and continuing justification, until April 30, 1973, when it was expected the program would be completed.

As contemplated by that order, Freeman now petitions for extension, affirming that it has complied with the conditions of the order. The Agency's recommendation concurs that Freeman is making satisfactory progress and there is nothing to suggest that the justification for the variance is any less than what we found sufficient a year ago. We shall therefore extend the variance to permit completion of the program as originally contemplated.

Freeman asks that we extend the compliance date further, to June 30, 1973, because "Freeman is of the opinion that" its "general contractor may be as much as two months behind schedule now and will not be able to make up the full period." The contractor himself, Freeman says, "maintains that it is on schedule or, in any event, will be able to come up to schedule." Unexpected soil difficulties, the Agency says, are the source of the problem; but because the contractor expects to be on time the Agency says the request for extension is premature, and we agree. Freeman and its contractor must do all they can to meet the schedule; if they ultimately cannot, an extension will be in order upon proof of satisfactory efforts. But we cannot simply give an insurance

policy against a contingency that may never occur; to do so would relieve any pressure to overcome the difficulties and meet the original schedule. See Village of Wilmette v. EPA, # 72-5, 3 PCB 483 (Jan. 17, 1972).

ORDER

- 1. The variance granted in #71-78 is hereby extended to April 30, 1973.
- 2. All conditions of the original order remain in effect.
- 3. The bond posted with the Agency shall be continued in effect until expiration of this variance.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 17th day of October, 1972, by a vote of

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Christan Maffell