

ILLINOIS POLLUTION CONTROL BOARD

March 29, 1971

MIDSTATE FOUNDRY COMPANY)

v.)


PCB 70-53)

ENVIRONMENTAL PROTECTION AGENCY)

Concurring Opinion by Mr. Dumelle

I concur in the grant of the variance in this case but feel constrained to admonish petitioner as we did in the recently decided variance request by Marblehead Lime Company (PCB 70-52, March 22, 1971). Lack of performance by some third party - be he vendor, fabricator or whatever, standing alone, is not sufficient hardship to allow this Board to grant a variance. A variance is an extraordinary privilege to be granted only in cases of extreme hardship, which is statutorily defined as "arbitrary or unreasonable hardship".

In cases of non-delivery or lack of performance by third parties, petitioner must show that he has done more than sit on his hands awaiting eventual delivery or performance. In my opinion, unless some wholly unexpected event has occurred, such as a fire at a supplier or a strike, the petitioner remains largely responsible for meeting deadlines. In this case a hearing might have shown that the petitioner had not met his burden; he may not have expended sufficient effort to effect timely delivery or he may not have negotiated adequate performance penalty clauses with his suppliers. However, since the requested time is now past and the issue is somewhat moot I shall vote with my fellow board members and grant the requested variance. However, I do this with this cautionary note which should be of interest to potential petitioners who may be behind schedule in their Air Contaminant Emission Reduction Program (ACERP). Deadlines are set to be met. The hired hands of the petitioner (suppliers) are not parties to these proceedings and we must look to the party for responsibility in these matters.



Jacob D. Dumelle, Member
Illinois Pollution Control Board

I, Regina E. Ryan, do hereby certify that the above Concurring Opinion was submitted on this 31st day of March, 1971



Regina E. Ryan, Clerk of the Board