ILLINOIS POLLUTION CONTROL BOARD
May 3, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#71-386
v.	)	
	)	
MONARCH FOUNDRY COMPANY, an Illinois corporation	)	
	)	
MONARCH FOUNDRY COMPANY, an Illinois corporation	)	
	)	
	)	#72-386
	)	
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

RICHARD W. COSBY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
DALE FLANDERS APPEARED ON BEHALF OF MONARCH FOUNDRY COMPANY

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against Monarch Foundry Company, located in Plano, Illinois, alleging that between July 1, 1970 and the close of the record, Respondent's operation of its gray iron cupola caused emissions so as to create air pollution, in violation of Section 9(a) of the Environmental Protection Act and emitted particulates into the air in violation of Rules 2-2.54 and 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution, and that Respondent installed certain equipment without a permit, thereby violating Section 9(b) of the Act and Rule 3-2.110 of said Rules.

On August 15, 1972, an amended complaint was filed which did not reallege the air pollution violation under Section 9(a) of the Act but reasserted violation of Rules 2-2.54, 3-3.111, 3-2.110 and Section 9(b) of the Act. The entry of a cease and desist order and penalties in the maximum statutory amount are sought.

Respondent filed an answer denying violation of the particulate emission Rules, admitting the installation of the equipment without permit, but contending that it was done pursuant to a program approved by the Illinois Air Pollution Control Board and that application for permit after installation was sought and denied by the Environmental Protection Agency.

A petition for variance was filed and subsequent thereto, an amended petition for variance. However, in view of our finding that the operation is presently in compliance, the variance is accordingly dismissed as moot and it will not be discussed in this Opinion.

Respondent's operation produces iron castings from raw material including steel scrap, pig iron, scrap castings, limestone and coke. The cupola in which the melting process takes place is equipped with an after burner and a wet cap. The Agency's case is based upon the employment of particulate emission factors found in Table 7-10 of AP-42. On the basis of a metal charging rate of 8.5 tons per hour and an emission factor of 8 pounds per ton of metal charged, the Agency calculated emissions from the cupola of 68 pounds per hour against an allowable emission rate found in Rule 3-3.111 of 19.2 pounds per hour (Environmental Protection Agency Exhibit 2). On the basis of the foregoing computations, a violation would be found.

The first issue to be resolved is which Regulation applies to the present proceeding. Respondent contended that Rule 2-2.54 with respect to existing small foundries (under 20,000 pounds per hour) was applicable, whereas the Agency charged the violation of Rule 3-3.111. At a process weight rate of approximately 10 tons per hour (R. 61), the cupola is small enough to be covered by Rule 2-2.54. The original size 7 cupola, in all probability, existed at that time. However, in September, 1971, a new Size 9-1/2 cupola was installed which would not be covered by Rule 2-2.54. By either Rule, the maximum emission rate of particulates for a process weight rate of 10 tons per hour would be 25.1 pounds per hour, which on the basis of the Agency's computation, would be exceeded by approximately 33 pounds per hour. The new cupola with wet cap and after burner was installed in September of 1971 (R. 141) and would not be covered by Rule 2-2.54.

In January of 1972, Respondent installed additional after burners and made modifications of the wet cap and increased its water pressure so that a higher degree of efficiency was created subsequent to that date. Respondent argues that the enactment of the new Air Pollution Control Regulations effective April 14, 1972, deferring compliance to December of 1973, constitutes a repeal of the earlier enacted Air Pollution Regulations, under which Respondent is charged in this proceeding and that as a consequence, Respondent's operation is subject only to Section 9(a) of the Environmental Protection Act which prohibits air pollution as therein defined. Respondent's contention in this respect is wholly lacking in merit.

Rule 114 of the Air Pollution Control Regulations provides as follows:

"REPEALER.

Each provision of the Rules and Regulations Governing the Control of Air Pollution, as amended August 19, 1969, applying to an emission source shall remain in full force and effect unless and until such source is required to comply with a corresponding provision of this Chapter."

It is clear that Respondent is obliged to comply with the earlier Rules to the extent applicable until the new Rules become operative. Respondent attempts to rebut the Agency's establishment of violation based on standard emission factors by contending that its abatement system was efficient enough to result in compliance. The Agency's calculations indicated an efficiency of 87% would be required using emission factors from AP-42 (R. 114). Respondent offered evidence over objection of the Agency of a stack test of a Modern Equipment Company wet cap, the same brand but a different model as that used by Monarch, demonstrating particulate collection efficiencies on two tests of 88.6% and 96.3% (Respondent's Exhibit 9). This was offered as proof that the collection efficiency exceeded both the 80% guaranteed by the manufacturer (R. 164) and the 87% which the Agency asserted would be needed for compliance. Even higher collection efficiency results would be obtained if an after burner were used, according to Modern (Respondent's Exhibit 9). In addition, the respondent claims that with an oversized wet cap, additional afterburners and increased water pressure, the wet cap would be operating at a higher efficiency than the 80% guaranteed by Modern Equipment Company. Table 7-10 of AP-42 appears to be premised on a collection efficiency of approximately 50%, if a wet cap is attached to the cupola.

The evidence of the presence of the additional after burners, the increase in water pressure and the oversizing of the wet cap indicate collection efficiencies far greater than the 50% on which the emission factors appear to be premised.

Accordingly, we find that lacking an affirmative showing to the contrary, Respondent's submissions are adequate to rebut a showing of violation at the present time. We hold that this absence of demonstrated violation would be effective from January 24, 1972. However, we do not feel the evidence is adequate to negate the showing of violation alleged to have occurred prior to this date and hold that prior to the improvements of January 24, 1972, Respondent has not rebutted the showing of violation based on the computations using standard emission factors. Assuming that Rule 2-2.54 was applicable prior to the installation of the new Size 9-1/2 cupola installed on September 1, 1971, we find Respondent to have violated this Rule between July 1, 1970 and September 1, 1971. Since the installation of the new Size 9-1/2 cupola constituted new equipment, we find Respondent to have been in violation of Rule 3-3.111 between September 1, 1971 and January 24, 1972,

when improvements were made which we feel adequate to rebut the showing of violation based on standard emission factors. We also find that Respondent has violated Rule 3-2.110 and Section 9(b) of the Act in installing the new cupola, wet cap and after burner without necessary permits.

Respondent received approval of an Acerp program from the Air Pollution Control Board in 1969. Section 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution provide that "when an emission reduction program has been approved, the person receiving the approval shall not be in violation of this section, provided that the improvement program is being implemented." Inherent in implementation of the program is the obtaining of the necessary permits to achieve it. We do not accept Respondent's bootstrap reasoning that the Acerp approval exonerates it from compliance with the permit provisions. It should also be noted that the term "this section" could only be applicable to Section 2 of Chapter 2 of the Air Rules whereas the permit procedures are found in Section 2 of Chapter 3 of the Air Rules. Respondent admits that it made the installation without the necessary permits and that once permit application was filed, it was denied by the Environmental Protection Agency, the successor to the Air Pollution Control Board. (R. 118, EPA Ex. 1, R. 156).

Monarch next contends that notwithstanding its failure to obtain permits, it embarked on a program which was superior to that which had been previously employed, by the expansion of the afterburners, the screening of coke and limestone and the increase in water pressure supplied to the wet cap (R. 141, R. 179). As noted, the new cupola with its after burner, was not in operation until September, 1971 (R.141), and the improvements in the increased after burner size and wet cap modification were completed on January 24, 1972. All of these installations appear to have been made either without permit being sought or subsequent to permit denial. Accordingly, we find Respondent to have violated Rule 3-2.110 of the Rules and Section 9(b) of the Act. In view of our finding that no present violation has been established by the proofs, Respondent's petition for variance is dismissed as moot. Our decision, however, does not foreclose the Agency from taking such other and further steps as it may deem appropriate to establish the violation in a future proceeding, nor is Respondent foreclosed from seeking a variance under such circumstances it deems appropriate. Our holding in this proceeding is only that no violation has been demonstrated subsequent to January 24, 1972, and, accordingly, no need for a variance is manifest.

The evidence does support the Agency's contention that violations of the Air Rules took place between July 1, 1970 and January 24, 1972 and that Respondent has violated the relevant Regulations and statutory provisions with respect to obtaining permits for installation of equipment. In view of Respondent's financial condition, together

with its good faith efforts in obtaining compliance, coupled with absence of any testimony indicating any adverse impact on the neighborhood, we are disposed to assess a nominal penalty, which will be in the amount of $1,000. We note that Respondent has made a significant effort to achieve compliance with the relevant Regulations, for which we give recognition.

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

IT IS THE ORDER of the Pollution Control Board that penalty in the amount of $1,000 is assessed against Monarch Foundry Company for violation of Rules 2-2.54 and 3-3.111 and 3-2.110 of the Rules and Regulations Governing the Control of Air Pollution and Section 9(b) of the Environmental Protection Act as found in this Opinion. Monarch Foundry Company shall pay to the State of Illinois by May 22, 1973, the aforesaid sum, by certified check or money order payable to the State of Illinois and shall be sent to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 3RD day of May 1973, by a vote of 4 to 0.

Christan L. Moffett