ILLINOIS POLLUTION CONTROL BOARD

June 28, 1971

CHICAGO-DUBUQUE FOUNDRY CORP.)	
V.	; }	#71-130
ENVIRONMENTAL PROTECTION AGENCY)	

Opinion of the Board (by Mr. Currie):

In 1967 the Air Pollution Control Board adopted emission standards for particulate air contaminants In 1971 the Chicago-Dubuque Foundry Corp., having installed no equipment to meet the 1967 standards, petitions for permission to do nothing about its emissions for another year on the ground that the federal government is in the process of adopting ambient air quality standards that allegedly might make any device that might be installed obsolete.

We dismiss the petition on the ground that even if all the allegations were proved no variance could be granted. No purpose save further delay would be served by a hearing on the present petition.

In the first place no explanation is offered for the extreme tardiness of the company in complying with the 1967 regulation. We have held that a petitioner cannot qualify for a variance simply by defaulting on its obligations; any hardship in such a case is self-inflicted. Moreover, there is no adequate allegation with respect to the issue of the harm that a variance grant would inflict on the community, an essential element of the petitioner's case. Decatur Sanitary District v. EPA, #71-37 (March 17, 1971).

If these were the only problems, we might schedule a hearing and direct an amendment to the petition in order to promote rapid resolution of the case. But there is a more serious deficiency here. The petitioner's case is based upon the wholly unacceptable premise that all progress toward reducing pollution must come to a screeching halt whenever any government attempts to reassess the adequacy of the present standards. It would be one thing to permit extra time to complete control program that had to be revised in midstream to conform with tightened regulations. But we could not conceivably grant an open-ended exemption from the present long-standing rules, without even so much as a program for achieving compliance, merely because of the possibility that the federal agency might some day require still better controls.

Not only is the company's claim predicated upon an untenable thesis, but the factual premises of its argument are unsound. The petition alleges that the adoption of national air-quality standards is a thing of the uncertain future, when in fact the standards

were adopted April 30, 1971. 36 F.R.8186 These standards, it should be said, do not directly limit emissions from individual plants; they prescribe maximum permissible concentrations in the air as a whole. The federal government has no direct authority to prescribe emission limits. The States are to do that, subject to federal review. Federal thoughts on the matter of emission limits are indicated by the model regulations published as a guide to the States in developing implementation plans to achieve compliance with the air-quality standards. 36F. R. 6680, 7971. Anyone worried about federally influenced regulations would appear quite safe in designing to meet the model federal regulations.

But we may very well tighten those limits ourselves. We have so proposed for the Chicago and St. Louis areas (##R71-4, R71-8) and may well do so statewide. The testimony is that the proposed new standard can be met on a foundry cupola with a scrubber of 98% efficiency, which is clearly available and in common use (Transcript, ##R70-15 and R71-4, pp. 79-90. An intelligent foundry owner with no control equipment would install such a scrubber as soon as is physically possible in an effort to avoid both a shutdown for violating the present law and the risk of being required to rebuild within a very short time. The likelihood that a more stringent emission regulation than that proposed for Chicago will be adopted by anybody for East Dubuque is remote indeed and does not justify further delay.

The petition is dismissed. The company would be well advised to file an amended petition at once embodying a firm program for complying with the regulations in the shortest possible time. The question whether by its delay the company has used up its time to pollute while correcting the problem will be the principal issue, together with the question of money penalties for the delay unless it can be satisfactorily explained. A complaint by the Agency would also appear to be called for.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the board adopted the above Opinion this 28 day of June, 1971.