

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 1971

Greenlee Foundries, Inc.            )  
  )  
      vs.                                )  
  )  
Environmental Protection Agency    )

PCB 70-33

Opinion of the Board (By Mr. Kissel):

On October 28, 1970, Greenlee Foundries, Inc., Cicero, requested a variance from the Pollution Control Board to operate in violation of the Rules and Regulations Governing Air Pollution, especially as to particulate emissions, until April 30, 1971. The petitioner sought this variance in order to operate its plant with the existing cupola as its primary melting source until an electric arc furnace installation was completed. The statutory provision requiring Board action in variance cases within 90 days of filing has been waived due to several continuations requested by the petitioner, including one to conduct a stack emission test on the cupola. After a hearing on the petition, the Board has agreed to grant the variance subject to certain terms and conditions.

Greenlee Foundry Co., a grey and ductile iron jobbing foundry, employs approximately 85 people in a plant located in the midst of a primarily industrial area beside the Belt Line Railroad in Cicero. Greenlee melts between 20 and 30 tons of metal a day, producing castings weighing from 3 to 30,000 pounds. The melting is presently accomplished with the aid of a coke-fired cupola. The melting process, when uncontrolled, discharges fly ash, other particulates and carbon monoxide through the cupola. According to Table II of Rule 2-2.54 of the Rules and Regulations Governing Air Pollution the maximum allowable emission rate from a foundry such as Greenlee's, operating with a load of 18,000 lbs./hr. is 23.40 lbs./hr. On the basis of a July, 1967, report to the Illinois Air Pollution Control Board, Greenlee itself estimated that its cupola was emitting 70 lbs./hr. of particulate matter. Subsequent to that report, Greenlee installed a wet cap on the cupola; as both the President of Greenlee and the Plant Manager conceded, the primary reason for the installation of the wet cap was to prevent sparks emanating from the operation of the cupola from spreading to nearby buildings. (R.58, 172) Mr. John Johnson, the Plant Manager, estimated that emissions with the wet cap were less than 20 lbs./hr. (R. 25 ) Otto Klein, an Environmental Control Engineer with the Environmental Protection Agency, seriously disputed the

effectiveness of Greenlee's wet cap in the control of air pollution. (R.373-5) Further, the U. S. Department of Health, Education & Welfare publication, Compilation of Air Pollutant Emission Factors, estimates that uncontrolled emissions from the cupola would be 157 lbs./hr., and with a wet cap, 75 lbs./hr. A stack emission test by Greenlee was unsuccessful since it could not be conducted in accordance with the ASME Power Test Code 27-1957.

To control the emissions from its melting process, Greenlee proposes to replace the cupola with an electric arc furnace. Emissions from the furnace will be to a bag collector of 30,000 cfm capacity, with eventual discharge to rupture-proof plastic bags. The furnace was to have been in place by February 28, 1971; Greenlee requests a 60-day start-up period from that date within which to operate the cupola in conjunction with the furnace and to train personnel in the operation of the furnace. In its recommendation, the Agency asks the Board to order the total cessation of the operation of the cupola upon the completion of the installation of the electric-furnace until the cupola is brought into compliance with the applicable Rules and Regulations.

In order to grant a variance under the Environmental Protection Act, the Board must find that compliance with its rules and regulations or with the statute would impose an "arbitrary and unreasonable hardship" upon the petitioner. If the plant were forced to cease operations between now and the end of April, this would mean a severe loss of business to a company in an already marginal industry; many customers might withdraw their patterns from Greenlee and would most probably never return with their business. Also, a large number of the employees would have to be laid off until a sufficient number were trained to operate the electric furnace. Nor is sufficient capital available to Greenlee to finance operation when, in effect, it would be manufacturing no products. As W. G. Greenlee, President of Greenlee Foundries, Inc., stated, such a shutdown would drive him out of business. (R. 115) Further, it does not appear that this plant's emissions over such a short period of time would cause appreciable injury or nuisance to any of the nearby residents. Greenlee is therefore free to operate its cupola until April 30, 1971.

Such grant, however, is subject to certain conditions. On the day of the hearing, the Agency's recommendation included a request that the Board penalize Greenlee \$10,000 for dilatory tactics in bringing its facility into compliance. The legal question of whether such a request constituted "surprise" and violated Greenlee's right to due process must first be resolved. First, the Agency's allegation of delay was based solely on the documents which Greenlee itself had submitted over the years to the Air Pollution Control Board and then

to the EPA. Second, the hearing stretched over 10 days and amply enabled Greenlee to attempt to refute the Agency's charges. No surprise therefore occurred and a full opportunity to present a case in rebuttal was afforded.

On July 19, 1967, Greenlee filed a letter of intent with the Air Pollution Control Board (APCB) indicating that it was formulating plans to investigate the replacement of its cupola with an electric furnace. Greenlee purchased said furnace in November, 1967. On April 12, 1968, Greenlee stated its proposed air contaminant emission reduction program (ACERP) as including the installation of an electric furnace with gas cleaning equipment; twelve months was the estimated completion time. On July 1, 1968, Greenlee informed the Technical Secretary of the APCB that the Board of Directors had approved the hiring of an engineering firm, whose work they anticipated would be completed in two months. After the receipt of that report, another 6-8 months would be needed before the electric furnace could be started up. In other words, in July, 1968, the estimated completion date was May, 1969. In August 1968, the APCB approved Greenlee's ACERP. The Greenlee Board of Directors, however, had not yet approved the ACERP and this issue was to be submitted to them in January, 1969. In January, Greenlee informed the Technical Secretary that the company had virtually stopped work on its emission reduction program due to a fear that the proposed Cross-Town Expressway might run near or through the plant. When the APCB inquired as to the status of Greenlee's program in March, it was informed that installation of a wet cap was underway but that any progress had stopped on the emission reduction program. In May, 1969, Greenlee determined that the Cross-Town posed no problem to the foundry. (R. 132) Finally, on July 10, 1969, the Board of Directors approved the installation of the electric furnace. On January 22, 1970, Greenlee informed the APCB that they foresaw that the installation would be complete by August, 1970, and submitted an ACERP for that date. The APCB approved Greenlee's revised ACERP in April 1970. Subsequently, Greenlee noted that heavy spring rains and the financial problems precipitated by a Chicagoland truck strike had stalled the project once again. At this point, Greenlee was advised by the EPA to file a variance petition before this Board.

Though Greenlee's most recent ACERP called for a completion date of August 27, 1970, this variance asks for yet a further extension until April 30, 1971. This Board is then asked to approve a program initiated in 1967, but not completed until four years later. The record fully illustrates the "stall" which Greenlee built into its program: submission of a plan, APCB approval, then retreat by the Board of Directors or by the President of Greenlee. Every possible excuse has been used to avoid compliance. Greenlee's correspondence

to the APCB and the EPA is replete with vague plans and indefinite promises. In considering a penalty for delay, this Board may only take into account Greenlee's failure to meet the August, 1970, date proposed and approved in the ACERP and its delay since that date. Despite the August date, it has still taken Greenlee six more months to complete the furnace installation. In the interim, emissions have continued unabated from the Greenlee plant. As a penalty for the dilatory tactics which Greenlee has employed, the Board assesses a fine of \$2000.00. In determining the amount of the fine, the Board has taken into account the marginal, low-profit nature of Greenlee's business. The Board also finds in accordance with Section 36 of the Environmental Protection Act, that such a penalty is necessary to effectuate the policies of the Act. (See Marquette Cement Co. v. EPA, PCB 70-23).

The Agency's recommendation also asked that Greenlee submit a plan for the control of other particulate and gaseous emissions in other portions of its operations, such as the ductile iron process, and the shakeout and cleaning areas. Greenlee offered no evidence at the hearing regarding controls of such emissions. The Board's concern about all sources of air pollution dictates that control plans for all sources in the foundry operation be submitted to the EPA.

Greenlee has asked the Board to consider the nature of its loan agreement before a bond is required to be posted. The Environmental Protection Act, however, requires that in the grant of a variance by the Board a sufficient performance bond or other security shall be posted as a condition of the variance.

The above constitutes the Board's findings of fact and conclusions of law.

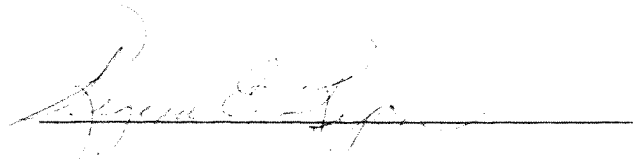
The following order is hereby entered:

- 1) Greenlee shall cease operation of its cupola as of May 1, 1971. The cupola shall never be operated again after that date.
- 2) Greenlee is not to exceed in either March or April, 1971, the rated monthly capacity of the cupola.
- 3) Greenlee shall remit to the Environmental Protection Agency the sum of \$2000.00 in penalty, as a condition of the variance.
- 4) Within 30 days from the entry of this order, Greenlee shall submit to the Environmental Protection Agency, control plans for other sources of air contaminants, if any, emanating from its facilities.
- 5) Greenlee shall post with the Environmental Protection Agency on or before March 30, 1971, in such form as the Agency may find satisfactory, a personal bond or other adequate security, in the amount of \$2500.00, which sum shall be forfeited to the State of Illinois in

the event that its plant is operated after May 1, 1971, in contravention of this variance.

6) The failure of Greenlee to adhere to any of the conditions of this order shall be grounds for revocation of the variance.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 17th day of March, 1971.

A handwritten signature in cursive script, appearing to read "Regina E. Ryan", is written over a solid horizontal line.