ILLINOIS POLLUTION CONTROL BOARD
August 6, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 71-86
STATE LINE FOUNDRIES, INC.	)	

Dissenting Opinion by Mr. Dumelle

The amount of the money penalty is my point of departure with the majority in this case. I believe that sound policy and past Board actions indicate that a fine in the range of $3,000-5,000 would have been more reasonable than the $7,500 penalty voted for by the majority.

In EPA v. Southern Illinos Asphalt Co., Inc. (PCB 71-31) the Board dealt with an asphaltic concrete batching plant which was a gross neighborhood nuisance. The company was not a new enterprise, it had been in business for a number of years. Inexplicably the company had no permit from the EPA or its predecessors. Faced with such a flagrantly violative situation the Board imposed a money penalty of $5,000.

In Roesch Enamel v. EPA,(PCB 71-62) the Board considered the particulate emissions from a ferro-enameling operation. The company, partly through inattention, failed to complete the procedures required in the rules for filing and having approved an air contaminant emission reduction program. The Board in that case imposed a fine of $5,000.

In both of the cases cited above the enterprise was clearly a "bigger business" than in the instant case and probably more readily able to absorb the financial shock of a multi-thousand dollar penalty. Equally as evident in the two cited cases was the intentional nature of each company's failure to comply with permit and abatement program procedures.

In the instant case the foundry was a new business, having been incorporated in 1967 and commencing operations in 1968. The foundry employed 17 persons and probably had annual sales on the order of $300,000. Figuring at 6% profit on sales would result in an estimated annual profit of $18,000. The fine of $7,500 is thus almost 50% of a year's profits.

The company's failure to obtain a permit appeared to be inadvertent. The operations of the foundry were conducted in a remote area with only three residences within a half-mile radius. Of the three, two had no complaint to make while the third could not be contacted by the EPA.

The desired results in each case before this Board is compliance with the applicable standard at the earliest possible time. This objective is not fully served, however, by an individual petitioner or respondent promising under oath that he will do such and such by so and so date. Incentives by way of bonds and/or money penalties are in order not only to insure that the individual litigant will comply but to inform others similarly situated that non-compliance is a serious social breach which may result in substantial money outlays by individual polluters. In this field of social activity as in every other, industry and other polluters must know what the cost of doing business is. Obviously each case of penalty imposition is mitigated or aggravated on its own peculiar facts but it is no part of this Board's business to force a legitimate enterprise out of business. Pollution hurts the public; the polluter must therefore be hurt a sufficient amount to force him (and others) to abate. The amount of hurt in each case must be below that threshold of financial pain leading to business abandonment so long as compliance is achieved.

In this case, then, we have a small and new company which has admitted guilt and thrown itself at the Board's mercy. The considerable cost of prosecution has been saved to the State. Yet the majority has levied a fine 50% larger than that in the contested Southern Illinois Asphalt Co. and the Roesch Enamel Co. case cited earlier. The Board ought to encourage pleas of guilty. The fine in this case is much too harsh in the circumstances cited and may kill or seriously injure a small business.

Jacob D. Dumelle
Member

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the above Dissenting Opinion was submitted on the 5th day of August, 1971.

Regina E. Ryan, Clerk
Illinois Pollution Control Board