

ILLINOIS POLLUTION CONTROL BOARD

March 17, 1971

MARBLEHEAD LIME COMPANY)
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)
 v.) #PCB 70-52
)
 ENVIRONMENTAL PROTECTION AGENCY)
)
)

Opinion of the Board (by Mr. Dumelle);

Marblehead Lime Company filed a petition for variance on December 28, 1970 with respect to Kiln No. 6 at its Thornton Plant. It filed a supplemental petition on January 28, 1971. After a hearing we grant the request of the petition subject to the conditions detailed below.

Kiln No. 6 operates 24 hours a day, seven days a week processing dolomite (limestone). The end product is lime which is used in the steel industry as a fluxing agent, and is also used in water treatment and other industrial processes (R. 27-29).

In its petition the company was seeking a variance from the particulate standards as set forth in the Rules and Regulations Governing the Control of Air Pollution enacted by this Board's predecessor, the Air Pollution Control Board. The variance was requested only for Kiln No. 6 and not any of the other three kilns. The variance was requested until March 15, 1971, a date now passed. The company filed a "letter of intent" on July 20, 1967 which indicated that Kiln No. 6 was not in compliance and further said that a firm program (ACERP) for bringing the kiln into compliance would be filed by April 15, 1968. In April 1968 the company proposed that the control equipment would be installed during 1970. The Technical Secretary of the Air Pollution Control Board in May of 1968 advised the company that its program was not acceptable because it was stretched too far into the future. After the petitioner explained its proposed timetable, the program was approved. The company submitted a progress report in December, 1968, July 1969, and September 1969. Very little progress was reported. One reason for the lack of progress at this point appears to be that the company was observing and evaluating another producer's use of an electrostatic precipitator. The installation on which the petitioner planned to make its decision experienced a

fire and thus proved to be unsatisfactory because of the explosion and fire hazard which it represented (R. 18-20). On January 5, 1970 the company applied for a permit to install a baghouse. The permit was granted on April 21, 1970. On December 3, 1970 the company advised the Environmental Protection Agency that its contemplated completion date of December 31, 1970 could not be met. The letter requested an extension of the compliance date to March 15, 1971. The instant petition followed.

Although the company's program to abate air pollution emissions was approved by the old Air Pollution Control Board in July of 1968, nothing tangible was accomplished until well into 1970. Such a delay appears to be unnecessarily excessive and were the petitioner seeking a substantial further delay and was not at the present acting in good faith, this factor would no doubt weigh heavily against the grant of such a request. The company did, however, seek a delay of very short duration and has stated that its installation was probably 96% complete as of the date of the hearing (R. 41). The baghouse system was to be completed by March 15, 1971 and Kiln No. 6 was not to be operated without a baghouse after that date (R. 42). These facts point to the conclusion that the pollutional problem with Kiln No. 6 is very nearly solved.

We have been notified by letter, dated March 15, 1971, that the petitioner has shut down its operation of Kiln No. 6. Apparently the baghouse is completely functional and ready to be put on line (R. 41-42). With its baghouse abatement system the company has stated that they will be controlling their emissions from Kiln No. 6 with an efficiency of 99.9% (R. 42). If the kiln were operating with no abatement of emissions it would be setting airborne 2,000 lbs per hour of lime dust. With the use of the baghouse the company anticipates that the emissions will be on the order of 2 lbs. per hour (R. 42-43). Before the installation of the baghouse system the emissions were estimated to be 354 lbs. per hour with the approximate 80% collection efficiency being effected by a dry cyclone collection system (R. 43).

There is evidence in this record that the company sought to interpose the non-delivery of the abatement system both as a defense in a lawsuit and as proof in the instant case of the existence of an arbitrary hardship. The petitioner here has met his burden inasmuch as he has demonstrated that he undertook reasonable measures to insure delivery including the dispatching of an expediter to various subcontractors to examine the contractor's work and schedule (R. 22). Other petitioners should, however, be on notice that lack of delivery, when no efforts are made to effectuate timely delivery, will not be looked upon favorably by this Board. It would be a foolish precedent for this Board to establish that a variance petitioner

after having done little or nothing to effect delivery may simply transfer the onus for non-completion of the job to his vendor.

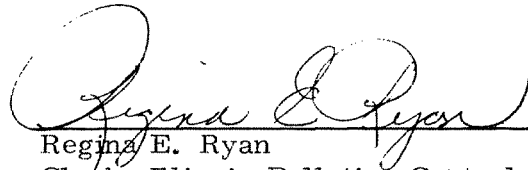
That the company has been acting in good faith in recent months is beyond question. This is demonstrated by the program which the company's chief engineer, Mr. Charles Norton, outlined at our hearing and is demonstrated from the record of the lawsuit styled People of the State of Illinois ex rel William J. Scott vs. Marblehead Lime Company, No. 70 CH4443 in the Circuit Court of Cook County, Illinois which was introduced as an exhibit in the instant hearing. Judge Nathan M. Cohen in fashioning an order at the conclusion of the hearing in that case specifically found that the company "is not guilty of any lack of good faith or willfulness in its failure to complete [the] system".

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

ORDER

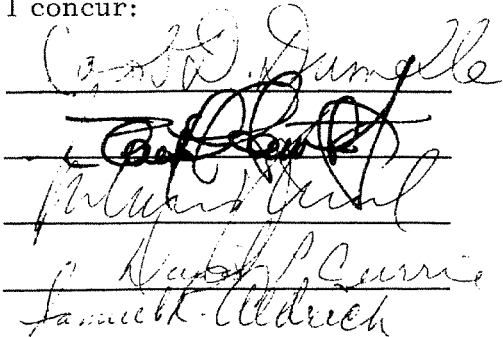
The Board, having considered the pleadings, transcript and exhibits in this proceeding hereby grants the petition of Marblehead Lime Company for a variance subject to the conditions detailed in the order entered by Judge Nathan Cohen on March 15, 1971 in case No. 70 CH4443 captioned People of the State of Illinois ex rel William J. Scott vs. Marblehead Lime Company in the Circuit Court of Cook County, Illinois.

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



Regina E. Ryan
Clerk, Illinois Pollution Control Board

I concur:



I dissent:
