



The variance is denied. Whether or not in this case the alkalinity of the recovered cement particles (R. 135-36) creates an exception to the general rule that emission control in the cement industry is a profitable method of product recovery (R. 124-25), the cost of pollution control is one that must be borne by the polluter and not by his innocent neighbors. The record includes serious objections from citizens to the grant of this variance (R. 119). It is clear that the emission of some 780 pounds per hour of cement dust (R. 73)--even if reduced somewhat by recent actions--although posing so far as the record shows no health danger (R. 53-54), is a rather considerable nuisance. There is no sufficient showing of hardship to justify the continuation of this nuisance. The equipment to stop it has already been ordered and delivered. It is ready to be installed, and there is no excuse for delay. As the Agency says in its recommendation, the unfortunate premature shutdown "is no more related to compliance with Rule 3-3.222 than is the fact that Eve ate the apple." One cannot avoid paying the rent on the ground that he has had a bad day on the stock market.

Under the statute (section 36(b)) a variance may be extended (and an ACERP is a variance, see EPA v. Commonwealth Edison Co., # 70-4 (Feb. 17, 1971)) only upon a showing that satisfactory progress has been made. This provision makes clear the statutory policy that variances are for those who are working as fast as they can to control emissions, not for those who simply prefer to postpone compliance for their own convenience so they can make an extra buck. To allow continued pollution while abatement work goes on is one thing; to stop working on abatement so that one may go on polluting is quite another.

Missouri Portland has missed its deadline without excuse. It stands in violation of the Environmental Protection Act and of the regulations. It shall cease and desist from such violations at once and proceed to install the required control equipment forthwith. Any further violations shall be subject to severe money penalties.

The variance is denied.

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

I, Regina E. Ryan, certify that the Board has approved the above Opinion and Order of the Board this 14 day of April, 1971

