ILLINOIS POLLUTION CONTROL BOARD April 8, 1976

AMERICAN FOUNDRY COMPANY,	AND MANUFACTURING)	
	Petitioner,))	
v)) PCB)	75-345	
ENVIRONMENTAL PRO	OTECTION AGENCY,))	
	Respondent.)	

Mr. Charles Shaffer appeared on behalf of Petitioner. Mr. John Palincsar appeared on behalf of Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Board upon Petition of the American Foundry and Manufacturing, Salem Foundry Division, (American Foundry) for variance from the Air Pollution Control Regulations for its cupola operation near the city of Salem, Marion County, Illinois. On September 19, 1975, the Illinois Environmental Protection Agency (Agency) moved to dismiss the petition without prejudice for failure to meet seven of the procedural requirements enumerated in Board Procedural Rule 401. On October 14, 1975, the Board granted Petitioner's request that it consider the Motion to Dismiss with the facts of the case after a hearing on the matter.

The Board deferred the consideration of the Agency's Motion to Dismiss in hopes that the Petitioner, during the hearing, would rectify the deficiencies as noted by the Agency in their Motion, so as to allow the Board to make a decision on the merits of the case. Unfortunately Petitioner failed to cure the defects in its Petition at the hearing. Instead it proposed that variance be granted from the Air Regulations for their cupola solely upon the heavy financial burden which would be imposed upon it.

The Agency's Motion to Dismiss included seven specific defects in the Petition for variance under Procedural Rule 401, all of which concern themselves with the fact that Petitioner has no plans for eventual compliance with the Regulations and indeed has no intention, according to the Petition before the Board, to bring their facility into compliance. A certain amount of evidence was produced by

Petitioner at the hearing in support of their allegation of financial hardship, but this fact by itself, is not sufficient for the Board to grant a variance. The Board finds from the evidence presented that Petitioner, in addition to the failure to provide for a compliance plan and schedule for an eventual compliance with the Regulations, has not fully investigated potential sources of capital which would allow them to purchase the necessary abatement equipment.

The Board will therefore grant the Agency's September 22, 1975, Motion to Dismiss and orders the Petition for Variance dismissed without prejudice as inadequate.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Pollution Control Board that American Foundry and Manufacturing Company's Petition for variance be, and is, hereby, dismissed without prejudice.

IT IS SO ORDERED.

Mr. Dumelle and Mr. Young concurs.

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Board,	hereby	certify	y the ai	bove Or	inion	and	Order	were.	adopted	on	the
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Christan L. Moffett, Plerk Illinois Pollution cortrol Board