

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1976

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

CONCURRING OPINION (by Mr. Dumelle and Mr. Young):

While we agree with the dismissal of this variance, we do not agree with the majority of the Board in its emphasis upon the absolute necessity for a compliance plan.

If the environmental effects of a discharge are minimal, as they seem to be in this case, then the economic hardship of compliance must be looked at carefully. The record shows an average net profit over six years of \$4,500 per year (R. 31). The control equipment is variously estimated at \$29,000 (R. 12) to \$177,000 (R. 14). The annual cost of operating the more expensive equipment seems to be \$6,000 (R. 18).

Thus it would appear that the lower cost equipment would take 5 to 6 years of profits to pay for it assuming no annual maintenance or operating costs. And the higher priced equipment would take 39 years to pay for it and then no funds would be available at all for annual operating costs.

If the profit figures are correct, then we have an impossible situation. The only alternative for the company would be to shut down to comply.

We do not feel that the Board Regulations contemplate that type of action in these circumstances. A compliance program could well be the abolition of the cupola when it has outlived

its useful life and its replacement then by an electric furnace, for example. Or compliance could be the end of the useful life of the entire foundry.

The Board has the power to grant 5-year variances. A marginal facility, such as this seems to be, might receive several of these variances subject to detailed financial examination. The analogy to a non-conforming use in zoning comes to mind. The foundry in this case cannot conform because to do so would mean economic suicide.

Because we agree that the financial items in this case need more detailed review and because it is a dismissal without prejudice we concur in the decision.

Submitted by Jacob D. Dumelle
Jacob D. Dumelle

and

Submitted by James L. Young
James L. Young

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Concurring Opinion was submitted on the 26th day of April, 1976.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board