

ILLINOIS POLLUTION CONTROL BOARD  
January 14 , 1976

SANDWICH IRON FOUNDRY, INC., )  
an Illinois corporation, )  
 )  
Petitioner, )  
 )  
v. ) PCB 75-213  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

Mr. Scott Courtin, Reid, Ochsenschlager, Murphy & Hupp, appeared  
on behalf of Petitioner  
Mr. Peter Orlinsky appeared on behalf of Respondent

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

On May 22, 1975, Petitioner filed a petition for variance seeking relief from Rule 203(d)(7)(C)(1) of the Board's Air Pollution Regulations. On May 29, 1975, the petition was found to be inadequate by the Board because it did not include information concerning the effect upon nearby residences if the variance were granted, and because it failed to include information pertaining to the criteria required by Train v. NRDC, Inc., 43 USLW 4467, (Supreme Court No. 73-1742, April 16, 1975).

On July 3, 1975, Petitioner refiled its petition of May 22, 1975, with some additional data, and on September 4, 1975, Petitioner filed a second amended petition for variance seeking relief therein from Rule 203(a) of the Air Pollution Regulations and supplied supplemental information required by the Board Order of May 29, 1975. A hearing was held on November 18, 1975 at which time a Stipulation was entered into between the parties.

Sandwich manufactures grey iron castings at its Plano plant and presently operates a 2 1/2 ton cupola which is the subject of this petition. The Agency has estimated that particulate emissions from this cupola are 20.4 lbs./hour, far exceeding the limit set by Rule 203(a) of 3.15 lbs./hour.

On June 25, 1975, Petitioner entered into a contract for the installation of a Venturi scrubber at a cost of \$89,000 and expects the equipment to be installed and operable by July of 1976. Petitioner submits the reason it has been dilatory in its pollution

control efforts is that prior to January, 1974, the controlling shareholder had thwarted any such effort. A change in the control of the corporation occurred in 1974 and the present controlling shareholder has taken an active interest in bringing the cupola into compliance.

The nearest residence to the foundry is estimated to be 150 feet away and Petitioner alleges that it has not received any complaints from the neighboring citizens with regard to the operation of the cupola. Petitioner thereby concludes that it would appear that the operation of the cupola, in violation of Rule 203 (a) would have little effect, if any, on the citizens who live in the vicinity. In data supplied by Petitioner, however, the 1974 annual geometric mean particulate concentration was found to be 92 micrograms per cubic meter at the Agency's Plano monitoring station, exceeding our standard of 75 micrograms per cubic meter.

Petitioner alleges that a denial of this variance petition would force a complete shutdown of the foundry, causing the dismissal of its 23 employees, and placing Petitioner's customers in a difficult, if not impossible position of attempting to replace Petitioner with another supplier.

The Agency, on page 3 of its Recommendation, is of the opinion that Petitioner's compliance program should bring the facility into compliance with Rule 203(a), and that Petitioner's project completion schedule is reasonable, considering the magnitude of the project. The Agency does not oppose the grant of a variance.

The Board, however, does not feel the Petitioner has met the burden on those seeking a variance. With the data supplied by Petitioner, it has not been established to the satisfaction of the Board that particulate emissions from the cupola will not contribute to an air quality violation in the surrounding area.

Petitioner concluded that the operation of the cupola in violation of Rule 203(a) would have little effect on the citizens who live in the plant vicinity because no complaints had been received from the neighboring citizens. We reject this conclusion. Petitioner cannot be authorized to operate its cupola in violation of Rule 203(a) just because it is located in a neighborhood with non-complaining citizens.

Although Petitioner alleges that a denial of this variance petition would force a shutdown of the plant, the allegation is unfounded. The Board has consistently held that a denial of a variance petition does not constitute a shutdown order. The Petitioner can still operate although subjecting itself to possible enforcement action (ABC Great States v. EPA, PCB 73-39; Unarco v. EPA, PCB 75-289).

While Petitioner alleges that it has recently pursued a solution to its problem and regrets the inaction of the earlier controlling interest, the corporation is, nonetheless, bound by the earlier officer's inaction even though it has now embarked on a satisfactory program to bring the plant into compliance. While proof of such circumstances might carry some weight when presented in mitigation in an enforcement action, the allegations do not establish a hardship on which a variance can be granted. It follows from this finding that to deny this variance request would not impose a hardship on Petitioner which could be considered unreasonable or arbitrary. Any hardship that results from a refusal to take necessary steps toward compliance is self-imposed, and that the hardship imposed by denying a variance is not unreasonable or arbitrary if it was earlier within the power of the Petitioner to comply (City of Danville v. EPA, PCB 72-335).


For the foregoing reasons the Board denies Sandwich Iron Foundry's petition for variance.

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

ORDER

It is the Order of the Board that the petition of Sandwich Iron Foundry, Inc. be and is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14<sup>th</sup> day of January, 1976 by a vote of 4-0.

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