ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

MARBLEHEAD LIME COMPANY, Petitioner,	)	
vs.	)	PCB 74-146
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

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

Marblehead Lime Company filed its Motion requesting the Board to reconsider its February 27, 1975 Opinion and Order which denied Marblehead's request for variance from Rule 203 (a) of the Air Pollution Control Regulations.

Marblehead points out that variance was sought for operation of a kiln after installation of cyclones instead of pending installation of the cyclones as the Opinion stated. Marblehead is correct that the Amended Petition sought relief for operation of the kiln after installation of the cyclones and not during the period pending installation as had been requested in the original Petition for Variance. Petitioner claims that statements attributed to its Chief Engineer, Charles Norton, concerning installation time of the cyclones had no bearing on the issue since they related only to the original petition and not the amended petition. Norton's testimony dealt with a crash installation program apparently designed to influence the Board relative to kiln operations pending installation of the cyclones. While the testimony was not crucial to the case we believe it was relevant.

Marblehead also states that it seeks "to operate the kiln with emissions falling in the range from 14 to 28 lbs. per hour rather than with emissions of 7.55 lbs. per hour [Rule 203(a)] or 15.8 lbs. per hour [Rule 203(b)]". There is no difficulty in determining which Rule is applicable in this case as the Board clearly stated in page 3 of its Opinion. Rule 203(a) is the applicable Rule and not Rule 203(b). Under Rule 203(a) emissions are limited to 7.55 lbs./hr.

In Part 2, Marblehead asserts that the "only testimony in this record concerning the health effects in the community in which this kiln is located appears in the testimony of Mrs. Charles Dyer..." This assertion is not correct. Agency Engineer Campbell testified to health effects he experienced at the plant (transcript, pages 155 and 156). In addition, Petitioner submitted an exhibit which did address the issue of health effects relative to lime and limestone plants. At page 122 of the transcript in PCB 74-146 Petitioner asked the Board to take official notice of Dr. Steinberg's testimony in PCB 73-223. On October 2, 1974 Petitioner submitted a written request to take official notice accompanied by a copy of Dr. Steinberg's testimony in PCB 73-223.

Had Petitioner not wanted the Board to consider Dr. Steinberg's testimony in this case, it should not have entered the testimony into the record. The fact is that Dr. Steinberg's testimony is a part of the record in PCB 74-146. Pages 1088, 1092, 1094, and 1095 of Dr. Steinberg's testimony deal with the nuisance and short term health effects of lime and limestone on a community.

Petitioner attempts to debate what level of particulates constitutes "excessive particulate emission". The parties in this matter stipulated that the cyclones could control particulate emissions to a rate of 14 to 28 lbs. per hour. The allowable emission rate is 7.55 lbs. per hour. Emissions from the kiln of two to four times the allowable rate does constitute an excessive particulate emission rate in our opinion.

In Part 3, Marblehead challenges a statement on Page 4 of the Board Opinion: "The Agency rejects Petitioner's contention that control efforts were not implemented at an earlier date because the Company believed that emissions from the kiln were within the allowable rate..." Marblehead asserts that the record does not support such a "so-called rejection".

The statement about the Agency's "rejection" is in the record as Item 20 in the Agency's Amended Recommendation. Campbell told Marblehead Lime in May 1972 and again in June 1973 that the Company was in violation of the Regulations. Based upon the visual observations of its Chief Engineer, Marblehead continued to insist it was not in violation. Finally, Marblehead decided that it ought to perform stack tests. These tests showed emission rates of 359 and 464 lbs./hr. of particulates which "surprised" Marblehead's Chief Engineer. In our opinion, Campbell's testimony is consistent with our finding that Marblehead was not acting in good faith. The record shows that the Agency did not buy Marblehead's good faith argument, and neither did the Board.

In Part 4, Marblehead contends that the Board failed to satisfy the mandate of Section 33 of the Environmental Protection Act in its Opinion and Order. Petitioner pleads that the reasons for denial of the variance are "not obvious from the Opinion and furnish little or no guidance to this or other Petitioners". Marblehead goes on to show how the Board would be compelled to grant the variance if it had only complied with Section 33 of the Environmental Protection Act.

We believe that we clarly established the reasons for denial of the variance on Page 5 of our Opinion. If Petitioner cannot understand the language we used, we indulge Petitioner here so that there be no further doubt to this Petitioner or any other.

Marblehead seeks to operate a kiln in continuous violation of the Regulations despite the fact that it has the expertise and capability to control the kiln emissions. Petitioner's expert testified that such control would cost between $150,000 and $200,000. (An Agency expert testified that a cost of $75,000 to $120,000 was more realistic.) Petitioner seeks Board approval of its plan to install used cyclones at a cost of $25,000 despite the fact that the cyclones admittedly will not bring the kiln emissions into compliance.

With the exception of certain economic information which Petitioner chose not to enter into the record, the record shows that Petitioner has all the necessary requisites to control its emissions but does not choose to do so because it is less expensive to install inadequate control devices. This flies in the face of Section 3(b) of the Environmental Protection Act which decrees that adverse effects upon the environment are to be fully considered and borne by those who cause them.

Marblehead is upset that the Board ruled the applicability of Rule 203(a) instead of Rule 203(b), stating that "although the Board denies Marblehead the right to emit at 15.8 lbs./hr. under Rule 203(b), it permits others, with highly toxic emissions, to emit at that rate". Here Petitioner disregards the fact that it should have been in compliance years ago and that the Agency told Marblehead of its violations almost three years ago. Rule 203(c) of the Air Pollution Control Regulations was adopted to cover the exact situation that we have here.

Petitioner requests that the Board weigh the emission of 20.45 lbs. of dust per hour (28 lbs. minus 7.55 lbs.) against eleven jobs. We have done this. The possible loss of employment for workers is one of the major factors that the Board considers when it decides upon a variance. We do not want the workers to lose their jobs. Marblehead obviously has the capability to bring this facility into compliance without firing

the employees. There is no right to a permanent variance from health related Regulations.

The final issue raised by Marblehead concerns the Hearing Officer's failure to reconvene the hearing after being ordered to do so by the Board. As the prior Opinion stated, the Board was not informed as to why the additional hearing never took place. However, shortly after additional discovery was ordered pursuant to the Agency's request, Marblehead filed its "Motion for Leave to Amend and for Consideration of the Merits of Said Petition".

As the Board noted in its prior Opinion, this filing constituted a request that the Board decide the case on the record as it then stood. By abandoning the opportunity to introduce additional evidence on economic feasibility of alternative control systems, Marblehead would avoid compliance with the order to supply extensive additional discovery sought by the Agency. The Board considered this motion to be an abandonment of the Company's request for the additional hearing.

We are not now convinced that the finger of fault should be pointed at any party in this matter over the failure to conduct the additional hearing. The Board granted Marblehead its request and decided the case on the record presented.

In light of matters discussed in this Opinion, two changes will be made to the February 27, 1975 Opinion and Order. A change will be made to reflect that the Amended Petition for Variance sought relief for the period after installation of the cyclone instead of pending installation. The second change will reflect that November 21, 1974 was the date by which the Board required the second hearing to be conducted. All other aspects of Petitioner's Motion will be denied.

ORDER

It is the Order of the Pollution Control Board that the Motion to Reconsider is hereby denied except for the following amendments to the February 27, 1975 Opinion and Order of the Board in PCB 74-146:

1. At paragraph 2, line 6, the date "December 1, 1974" is amended to read "November 21, 1974".

2. At paragraph 6, line 2, the word "pending" is amended to read "after".

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 8th day of May, 1975 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board