

ILLINOIS POLLUTION CONTROL BOARD
June 9, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 76-263
)
SOUTH SIDE FOUNDRY CORPORATION,)
)
Respondent.)

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, ENVIRONMENTAL CONTROL DIVISION, APPEARED ON BEHALF OF THE COMPLAINANT;
MR. RICHARD J. TROY, OF SNEIDER & TROY, APPEARED ON BEHALF OF THE RESPONDENT.

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

On October 22, 1976 the Environmental Protection Agency (Agency) filed a Complaint against South Side Foundry (Foundry), a corporation located in Peoria County held by two family members. The Complaint charges Respondent with operating its cupola without having obtained an operating permit from the Agency as required by Rule 103(b)(2) of the Pollution Control Board Rules and Regulations, Chapter 2: Air Pollution. A hearing was held February 8, 1977 at Peoria City Hall.

At the hearing, Respondent reluctantly admitted being in technical violation of the Rule (R.9). Respondent believed, up until the time of the enforcement action, however, that its permit application was being processed. Recurring communications with Agency personnel reinforced this belief.

Respondent had applied for a permit in October, 1972. Notice of the denial was received in December of 1972. The basis for the denial was the need for a variance from the Board. On January 19, 1973, the Board granted the Foundry a variance (PCB 72-105). It was at this stage that the Foundry thought its permits application would be processed since it then met all the substantive requirements for

the Agency permit; it did not realize, nor was it subsequently informed, that it had to refile all of the information with the Agency.

The Board agrees with the Agency that the polluter should bear the responsibility for compliance with the pollution laws. Based on that reasoning and that Respondent has admitted it did not have the required permit, the Board finds South Side Foundry in violation of Rule 103(b)(2) of Chapter 2: Air Pollution. The Board does not believe, however, that a penalty in this case would aid enforcement of the Act. Respondent believed it was doing all it could to comply with the Regulation and the facts support that the belief was justified.

Between 1972 and the time of the present enforcement action, the Foundry and Agency personnel communicated a number of times by letter, by telephone, and via Agency visits. As a result, Respondent testified, the Agency had been advised of the Foundry's current status (R.8). Respondent notified the Agency that its permit application was being processed by the Agency (R.7,50), and that conversion to oil or propane, which had been ordered in a previous enforcement action, was not feasible due to lack of available space for a tank (R.8). The Agency's response was this enforcement action.

Consideration of the Act's Section 33(c) factors supports this conclusion as well. No members of the public reported any injury or nuisance resulting from Respondent's violation. While the Foundry has been in operation for 50 years, the president claimed is a small operation, one that doesn't even keep logs of the cupola operation. In 1972 family members contributed to the company to keep it out of bankruptcy. The Foundry studied alternatives. The cost of conversion to electric furnaces would have been "a couple hundred thousand" back in 1972 (R.31). The Combustor Equipment Company reported there was no available space to locate a gas tank. While no evidence was offered as to proximity to residential areas, Respondent indicated it is surrounded by a highway, a railroad, Peoria Water Company and a meat company.

Given that Respondent notified the Agency of its activity, that the Foundry had complied with the substantive requirements for the permit, and that it had attempted to convert to a more efficient system, i.e. that no bad faith was shown, the Board finds that a penalty is unwarranted.


This Opinion constitutes the Board's finding of fact and conclusion of law.

ORDER

1. Respondent South Side Foundry is hereby found to have violated Rule 103(b)(2) of the Pollution Control Board Rules and Regulations, Chapter 2: Air Pollution.
2. Respondent South Side Foundry shall submit to the Agency, within 30 days of the date of this Order, its permit application in compliance with all the procedural requirements of the Agency.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9th day of June, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board