

ILLINOIS POLLUTION CONTROL BOARD

July 24, 1975

MODERN FOUNDRY AND MANUFACTURING CO., )  
Petitioner, )  
 )  
v. ) PCB 75-132  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
Respondent. )

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On March 25, 1975, Modern Foundry and Manufacturing Co. filed its Petition For Variance with the Illinois Pollution Control Board (Board). Subsequent to the Board's More Information Order on April 4, Petitioner filed its Amended Petition For Variance on May 1, 1975. The Illinois Environmental Protection Agency, already in receipt of the May 1 data, filed its Recommendation of grant on April 24, 1975.

Petitioner operates a grey iron foundry in Mascoutah, St. Clair County, Illinois. The foundry is located near the edge of town in an area partially rural and partially residential. The City's population is 5,000. Seventy-five people work for the Petitioner, the City's second largest employer. The weekly payroll from Modern Foundry's production of castings totals \$12,000.00.

Petitioner seeks a variance from Rule 206(e) of the Board's Air Pollution Regulations (Chapter 2) until December 25, 1975. Petitioner is presently exceeding the carbon monoxide standard in Rule 206(e) of 200 ppm and requests sufficient time to install an afterburner to control its emissions. Rule 206(e) was effective December 31, 1973. The emission source is the No. 5 Whiting cupola operated approximately 10 hours per week at a process rate weight of 16,003 pounds per hour. Calculations by both parties establish that approximately 5,000 ppm of carbon monoxide are emitted by Petitioner's operations.

Petitioner first became aware of its pollution problem after it was denied renewal of its Operating Permit because of failure to meet Rule 206(e) standards. Because the Agency denied Petitioner's construction permit on April 3, 1975 for lack of sufficient information, the variance is requested until December 25, 1975. The parties agree that the afterburner will remedy the problem. The Agency recommended that only a six-month variance be granted, since Petitioner stated that installation of the afterburner could be completed in 25 weeks. The Agency has received no objections to the grant of the variance.

To satisfy the test of arbitrary or unreasonable hardship Petitioner stated that it "has made a good faith effort to achieve compliance as soon as practicable following its notice of possible non-compliance." Petitioner also indicated the severe economic impact that curtailling plant operations would have on the community and its employees. Petitioner also added that it "would be faced not only with a loss of profits, but suits for breach of contract with resultant damages to Petitioner for its inability to meet contract commitments to its customers for production of grey iron castings."

We deny the variance. The delay in achieving compliance is self-imposed. Although Petitioner may not have been aware of its pollution problem until recently, this does not excuse non-compliance. To grant a variance with reliance, in fact, on Petitioner's ignorance of the magnitude of its excessive emissions levels, would discourage others from scrutinizing their plant operations. In this case, Petitioner's emissions are 25 times the standard under Rule 206(e). Although Petitioner is now making good faith efforts to achieve compliance, this does not warrant the grant of a variance, because such efforts do not establish arbitrary or unreasonable hardship. While we realize that the community and company employees may undergo severe hardship due to denial of this variance, such arguments cannot be used as a means to avoid the consequences of one's failure to comply with the regulations. Finally, granting a variance under the circumstances of this case would only reward Petitioner for its delay in achieving compliance.

In Train v. Natural Resources Defense Council, Inc. 43 LW 4467 (April 15, 1975) the United States Supreme Court ruled that variances from implementation plans can be granted provided that the national ambient air quality standards are not violated. Petitioner has not submitted any data on the ambient air quality for carbon monoxide in the area in which it is located. If a subsequent similar variance request is made it should include ambient air quality data for carbon monoxide in the area. A variance from Rule 104(b) (2) of Chapter 2 may also be needed in order to obtain a construction permit from the Agency.

Based on the facts of this case, Petition for Variance is denied without prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24<sup>th</sup> day of July, 1975, by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board