ILLINOIS POLLUTION CONTROL BOARD October 17, 1972

GENERAL	IRON	INDUSTRIES,	INC.	et	al.)		
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		v .)	#	72-308
ENVIRONM	ENTAL	PROTECTION	AGENO	CY)		

Opinion & Order of the Board (by Mr. Currie):

Our order of March 7, 1972 directed General Iron, among other things, to complete installation of a baghouse at its secondary metals reclaiming facility in Chicago by July 31, 1972, and granted a variance on strict conditions until that date (## 71-297, 71-335, 3 PCB 739). General Iron filed the present petition July 25, 1972, less than a week before expiration of the variance, asking that it be extended to November 15 because of a two-month delay in delivery of the baghouse. As the Agency's recommendation says, a 60-day delay in delivery, no matter how excusable, does not justify a 105-day extension of time in which to comply. There is no allegation that more than 60 days' delay can be justified; indeed it is alleged that "it is not anticipated that any further delay will be encountered in delivery or installation." Thus the allegations, even if proved, are insufficient to support the grant of any variance beyond September 30, 1972. That date has passed, and there is therefore no need for us to decide at this point whether the variance should be extended to September 30. The company's future conduct does not depend upon whether it is absolved of liability for past activities, and the defense of justification will be available in the event a complaint is filed. National Gypsum Co. v. EPA, #71-98, 2 PCB 185 (August 2, 1971).

The Agency's recommendation makes grave allegations that conditions of the variance have been violated by the burning of insulated wire and by operation at production rates greatly exceeding those prescribed and agreed to by the company. There is no time for proof of such allegations before expiration of the 90 days in which the case must be decided, and we do not consider them today. If established they would bear upon the propriety of extending the variance as well as raising the question of affirmative sanctions. A complaint should be filed if the Agency wishes to press the matter.

Insofar as the petition seeks relief beyond September 30, 1972, it is dismissed for failure to state a claim on which relief could be granted (PCB Regs., Ch. 1, Rule 405(b)(1). Insofar as it seeks a declaration of non-liability for actions before September 30, it is dismissed on the ground that the controversy is moot unless and until a complaint is filed, at which time a defense based on the same allegations will constitute an adequate remedy.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order of the Board this 17 day of October, 1972, by a vote of

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