

May 16, 1974

FERGUSON AND LANGE FOUNDRIES, INC.,)
)
Petitioner,)
)
vs.) PCB 74-82
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

John A. Cook, Attorney, on behalf of Petitioner;
Kathryn S. Nesburg, Attorney, on behalf of the Environmental
Protection Agency.

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

The Petitioner is Ferguson and Lange Foundries, Inc. (hereinafter Petitioner). The Petition was filed with the Environmental Protection Agency (hereinafter Agency) on March 3, 1974.

This is a Petition for an Extension of the Variance granted in PCB 73-474. The Pollution Control Board (hereinafter Board) granted the Variance from Rules 3-3.111 and 203(a) until February 28, 1974.

Petitioner operates a foundry in Chicago which produces grey iron and ductile iron castings utilizing a cupola furnace which emits particulates and carbon monoxide.

Petitioner entered into a turn-key contract with Combustion Equipment Associates, Inc. (CEA) on April 26, 1971 to engineer and install control equipment to limit the particulate emission within the requirements of the Environmental Protection Act. Under the terms of the contract, CEA assumed full responsibility for all facets of the job, including design of equipment and supervision of subcontractors.

On March 22, 1973, the Board fined Petitioner \$200 for failure to obtain a construction permit and operating the cupola in violation of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution (PCB 72-284). At the same time, the Board granted Petitioner a Variance until March 31, 1973 in order to continue operation of the cupola in an uncontrolled state (PCB 73-46).

On November 8, 1973, Petitioner again filed a Petition for Variance. The emission control system had been installed but a design error by CEA necessitated the replacement of a large motor

and modification of a portion of the baghouse filter system.

The Board granted the Variance until February 28, 1974 (PCB 73-474) after making the finding that the delay was not caused by Petitioner and that the delay would result in limited particulate emissions.

Petitioner requests the variance extension until April 30, 1974 in order to have time to complete certain finishing work and adjustments to the system.

Petitioner's facility is located in a highly industrial area. Measurements of particulates taken at the nearest air monitoring station (within two miles of the facility) show a concentration of 132 micrograms of particulates per cubic meter as compared to the National Air Quality Standard of 75 micrograms per cubic meter.

Petitioner has expended approximately \$140,000 in an attempt to bring its facility into compliance by installing a control system consisting of a direct-flame afterburner, a baffle chamber, a water spray quench system, a cyclone, and a positive pressure baghouse. The manufacturer of the control system has guaranteed the efficiency to be 99.9% - more than adequate to bring the cupola into compliance.

The Agency states in its Recommendation to the Board, "Petitioner claims that CEA is primarily responsible for the delay because of its failure to meet its contractual obligations and complete the work on time. Because of the nature of Petitioner's contract with CEA, that is, putting CEA in complete charge of design, planning, contracting, and sub-contracting, Petitioner was unable to control the progress of the installation. Thus, it would amount to an arbitrary and unreasonable hardship to deny the Variance when the delay is not the fault of Petitioner." While the Board agrees that at this period of compliance to deny a variance would be arbitrary, it cannot base such a finding on the Agency's reasoning. The Petitioner cannot delegate his statutory responsibility to another party. He has the obligation and any outside contractual agreements cannot relieve him as to this Board.

The Agency has not received any adverse citizen comment with respect to the grant of the Variance and believes that the successful completion of the installation of control equipment will bring Petitioner's facility into compliance.

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

IT IS THE ORDER of the Pollution Control Board:

1. That the Variance from Rules 3-3.111 and 203(a) be granted until April 30, 1974, subject to the following conditions:

a. Within sixty (60) days of the date of this Order, the Petitioner shall have performed a stack test on the cupola control equipment. Petitioner shall give five (5) days notice of the test to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Region II Office
Illinois Naval Armory
East Randolph at the Lake
Chicago, Illinois 60602
Telephone: (312) 793-4966

and allow Agency observation if required. Petitioner shall submit complete results of the said test to the Agency at the aforementioned address within thirty (30) days.

b. Petitioner shall apply all necessary operating permits for the facility from the Agency.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 16th day of May, 1974 by a vote of 5-0

Christan L. Moffett