

ILLINOIS POLLUTION CONTROL BOARD

March 22, 1971

MIDSTATE FOUNDRY CO.)
)
 v.) PCB#70-53
)
 ENVIRONMENTAL PROTECTION AGENCY)

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

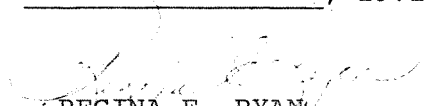
Midstate petitioned for a sixty-day extension of its air contaminant emission reduction program (ACERP) for installing a scrubber to reduce particulate emissions from a small iron foundry cupola. Attached to the petition were several letters from suppliers making clear that the rather small delay in completion was due to problems of the company's suppliers and not to any default of Midstate itself. We did not authorize a hearing, believing it probable on the basis of the petition that the variance could be granted on the basis of a favorable Agency recommendation alone.

The Agency filed its recommendation March 18, observing that the installation has since been completed and enclosing a letter from Midstate asking that its petition be withdrawn since no further extension is needed. We do not believe the case is moot in the technical sense, since a variance grant today would immunize the company from any future prosecution for delay and since in addition we have the power to impose penalties as a condition of a variance in order to deter delay and to reduce litigation. See Marquette Cement Co., v. EPA, #70-23 (Jan. 6, 1971). In this case, however, we think the record suggests no reason to penalize the company since the relatively small delay was beyond its control, and accordingly we accept the withdrawal of the petition and dismiss the proceeding.

This opinion constitutes the Board's findings of fact, conclusions of law, and order.

(Mr. Dumelle will file a concurring opinion)

I, Regina E. Ryan, do hereby certify that the above Opinion and Order was approved this 22nd day of March, 1971.


REGINA E. RYAN
CLERK OF THE BOARD