

ILLINOIS POLLUTION CONTROL BOARD
October 28, 1971

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) PCB 71-108
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 MODERN FOUNDRY AND MANUFAC-)
 TURING COMPANY)

Jim D. Keehner, Attorney for the Environmental Protection Agency
William D. Stiehl, Attorney for Modern Foundry and Manufacturing Co.

Opinion of the Board (by Mr. Kissel):

On May 13, 1971, the Environmental Protection Agency (the "Agency") filed a Complaint with the Board alleging that the Modern Foundry and Manufacturing Company ("Modern Foundry") has since July 18, 1967 emitted certain contaminants into the atmosphere so as to violate the Air Pollution Control Act, the Environmental Protection Act and the rules and regulations promulgated thereunder. The Agency requested that a cease and desist order be entered against Modern Foundry requiring it to stop all the alleged violations and further, the Agency requested that money penalties be assessed against Modern Foundry. A hearing on the Complaint was held in Belleville, Illinois on August 12 and 13, 1971, before George Faber, the duly appointed hearing officer.

Modern Foundry operates a gray iron casting shop in Mascoutah, Illinois. In this process it uses a #5 Whiting cupola in which scrap iron is melted after being charged with coke. The melted iron is then poured into sand molds, allowed to harden; then the molds are shaken out. The principal problem from a pollution standpoint in the operation of the Modern Foundry plant has been the emissions from the cupola. Based upon the computations made by the Agency, and testified to by Mr. Telford, Modern Foundry emits 65 pounds per hour of particulate matter, when the regulations only permit them to emit 17 pounds per hour. See Rules and Regulations Governing the Control of Air Pollution, Rule 2-2.54. Modern Foundry did not deny that it had violated the law at least since 1967 when the regulations went into effect; in fact, it admitted on the record that it was guilty of air pollution from 1967 to the date of the hearing. The only reservation which it imposed was that it felt that because of the statute of limitations the Board could not impose penalties on

paragraph 12 relating to the completion of plans and specifications 18 months before the completion date for tertiary facilities and award of the construction contracts 12 months before the completion date. In other words, the City is under a requirement to provide tertiary treatment by July, 1972 and it is under a further requirement to submit plans by January, 1971 and award construction contracts by July, 1971. Under the regulations the City has a legal duty at this time to let contracts and commence construction to meet the BOD and suspended solids effluent standards and the chlorination requirement by July, 1972. With its petition, the City asked for a six-month extension of the SWB-14 timetable for construction of needed facilities.

The organic load on the plant is more than twice the designed capacity (R.37,44). The plant is handling an average monthly population equivalent of 97,000 (EPA Ex. 3) although the city engineer estimated that it was currently at 80,000 (R.37).

Industrial waste surges sometime peak the plant at a population equivalent of 150,000 (R.44). The facilities are thus stressed by an incursion of up to 400% of the contaminants which the plant was designed to handle.

The problem at the plant is one of industrial waste loading. In an effort to deal with the difficulty and redistribute the cost of treatment, the City passed an industrial waste ordinance on February 11, 1970. Mr. Jack Faggetti, the City Engineer, stated that "If all the plants would comply with the Industrial Waste Ordinance, we would be below the design population equivalent of the plant." (R.45).

There are three principal industrial waste dischargers to the Olney plant. A chicken processing plant, Kralis Poultry Company, Inc. (Kralis); a dairy products company, Prairie Farmer Dairy, Inc. (Prairie); and a metal fabricating plant, AMF Incorporated (AMF). Kralis dresses 16,000 chickens per day, employs 100 persons (R.12) and is responsible for a population equivalent load of 26,000 on the treatment plant (R.44). The company's effluent contains fat and grease and chicken viscera (R.11). Kralis is proceeding to install pretreatment facilities which are due to be operational in the early part of December, 1971. AMF is also presently working on its pretreatment plant and plans to be operational by December, 1971, too (R.10, 33-34). Prairie has apparently done nothing. Mr. Cloren Jourdan, the treatment plant superintendent, testified at the hearing of a recent sample of Prairie's effluent which contained a suspended solids concentration of 12,000 mg/l (R.79) probably due to a loss of sugar. Obviously, the City must take some steps to be assured that abatement through pretreatment will be effected at Prairie. The City must pursue the matter assiduously for its proposed program to succeed.

Modern Foundry did not meet the date of September, 1970, for the installation and operation of the wet scrubber system on the cupola. It wasn't until recently that they did have the equipment installed and operating. The Board was advised by letter from Modern Foundry that all pollution control equipment was installed by September 15, 1971, and recently advised the Board that stack tests on the facility indicate that the emissions were within the permissible limit of the regulations.

Since the pollution control equipment has been installed, and is apparently operating properly, the only issue before the Board at this time is whether a money penalty should be assessed against Modern Foundry. The evidence in the record establishes that the operation of the Modern Foundry plant did have an effect on the life and property of the neighbors. Although there was some dispute about this, one witness was quite emphatic about the dust emissions from the plant and he described the odor from the plant as "rancid and sulfurous". (R. 95) Other witnesses, mostly employees of the plant, said they had never heard complaints about the operation of the plant. While we are certain this testimony was made in good faith, it must certainly be somewhat discounted when weighed against the testimony of an independent witness who brought pictures to prove his allegations. In addition to the testimony from the neighbor, Modern Foundry admitted the fact that they were in violation of the statute and the applicable regulations, and further, didn't contest the calculations of the Agency witness that the emissions from the cupola were 65 pounds per hour and the allowable particulate emissions by regulation was, and is, 17 pounds per hour based upon the process weight of Modern Foundry. Based upon the foregoing, a penalty is called for in this case, but the question still remains as to the amount.

We have long held that, while an ACERP is not valid for longer than one year, it is a defense in an action for penalties against the person holding the ACERP. EPA v. Commonwealth Edison Co., PCB 70-4, dated February 17, 1971. In this case Modern Foundry did have an effective ACERP which allowed it until September of 1970 to install and have in operation the pollution control devices; therefore, until that date no penalty can be assessed for Modern Foundry's failure to complete its program. While the record does show that Modern Foundry did "drag its feet" during this time, the fact is they hired a contractor to do the job and were proceeding with the program. The ACERP also required that Modern Foundry submit "periodic reports" which it forgot about. But the record does show that Modern Foundry did send letters to the Agency and its predecessor advising the Agency, et al, of the progress of the

installation of the wet scrubber. Certainly, this is minimal compliance with the requirement to submit "periodic reports", but nevertheless, it was an attempt of the kind that would say that Modern Foundry was not consciously avoiding and not following the terms of the ACERP. If they had so avoided the conditions of the ACERP, the ACERP would no longer be a defense to any action for penalties.

If penalties are to be assessed, it must be for the period of time beginning in September, 1970 to September, 1971, [1] when the equipment was finally installed. The ACERP ran out in 1970, and although Modern Foundry was specifically advised by the Agency that it must file for a variance, it didn't. This is a conscious disregard for the law and forms the basis for the imposition of a penalty since during this period Modern Foundry, by its own admission and the evidence previously described, was emitting contaminants which were in excess of the regulation and causing "air pollution". Modern Foundry attempted to explain the delay in installation and operation of the equipment on these grounds: first, it said that it discovered that the City would not be able to supply sufficient quantities of water and this caused Modern Foundry to install a water tank which took an additional month or so; second, the contractor changed the design of the wet scrubber; and third, the equipment was not delivered on time. We think that none of these reasons are valid after the fact. Modern Foundry should have, as it was advised to do, filed for a variance long ago. These may, or may not, have been reasons for granting of the variance at that time, but are not reasons for not imposing a penalty now. But the penalty must indeed be a small one because of the financial condition of the company. In 1971, for example, the company sustained a loss of \$10,140.69, and the equipment which has just been installed will impose an additional financial burden on the company. Further, we take into account that some testimony indicated that the effect of the emissions on the community were negligible. We, therefore, after consideration of all circumstances outlined in this opinion impose a penalty of \$1,000. If the financial circumstances of the company were different the penalty would be higher.

[1] Since the time period for the penalty involves only the last year, it is not necessary to deal with the point made by Modern Foundry's attorney that the statute of limitations applicable to penalties under the Environmental Protection Act is 18 months.


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

O R D E R

Based upon the evidence and exhibits in the record, the Board hereby makes the following orders:

1. Modern Foundry shall cease and desist from the operation of its cupola at Mascoutah, Illinois, so as to violate the Act or the applicable regulations.
2. Modern Foundry shall submit to the Board and the Agency the final specific results of the stack test recently done on the stack with the pollution control equipment.
3. Modern Foundry shall pay a penalty to the State in the amount of \$1,000 for the reasons stated in the opinion.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 28 day of October, 1971.



Regina E. Ryan, Clerk