

ILLINOIS POLLUTION CONTROL BOARD
September 3, 1992

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-161
) (Enforcement)
)
ELIZABETH STREET FOUNDRY,)
INC.,)
an Illinois Corporation,)
)
Respondent.)

MESSRS GERALD KARR AND JOSEPH PODLEWSKI APPEARED ON BEHALF OF
COMPLAINANT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

MR. RICHARD J. TROY APPEARED ON BEHALF OF RESPONDENT, ELIZABETH
STREET FOUNDRY, INC.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

This matter comes before the Board upon complainant's October 1, 1986, three count complaint which alleged the following: respondent operated its facility without required operating permits in violation of Section 9(b) of the Illinois Environmental Protection Act (Act) and 35 Ill. Adm. Code 201.144; respondent's facility caused emissions in excess of maximum allowable rates in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.144 and 212.321; and that respondent has violated this Board's Order of April 17, 1973 in PCB 72-468. Respondent failed to answer the complaint; therefore, pursuant to 35 Ill. Adm. Code 103.122(d), all material allegations of the complaint are denied. Respondent filed interrogatories on May 7, 1987, requesting complainant to explain the emission calculations referred to in Count II and also requesting an explanation as to why complainant's calculations invoked the use of "new process sources," as opposed to "existing process sources". Complainant responded on May 22, 1987. Hearings were held on May 26, 1987 and July 27, 1987.

On March 24, 1988, the Board issued an interim opinion and order finding violation of all three counts. The Board did not set forth penalties at that time; rather, the Board directed respondent to contact Harry Pestine at the Department of Commerce and Community Affairs to investigate the availability of financing for conducting a stack test and purchase of pollution control equipment.

0135-0473

BACKGROUND¹

Respondent, an Illinois Corporation, is a grey iron foundry located at 5838 S. Racine Avenue, Chicago, Cook County, Illinois. The foundry has been in operation for at least forty-one (41) years, and has been at the same location for 100 years. Respondent "currently employs 25 or 26 persons who work an average of 25 to 30 hours a week". (Elizabeth Street Foundry, AS91-5, August 13, 1992.) However, respondent has experienced both good and bad times during the last 15 years. (Tr. at 157.)²

The foundry operation produces cast iron repair parts for machine tools. (Tr. at 104, 156.) A cupola stack furnace is used to melt iron. (Tr. at 92.) Basically the furnace operates as follows: the furnace is filled with coke and metallic materials. Air is blown into the lower part which ignites the coke to a temperature of 3300 F and melts the material. Molten iron is tapped out at the bottom and slag is tapped out via a different exit. The iron is then poured into molds for later use. (Tr. at 93.)

The overall operation is antiquated, cupola furnaces operating essentially the same since 600 B.C. (Tr. at 99.) The equipment and operation of respondent's foundry has been the same for at least twenty (20) years -- except for an afterburner which was installed several years ago pursuant to this Board's Order in PCB 72-468. (Tr. at 101.)

On June 14, 1973, the Board accepted respondent's proposal to install an afterburner as part of a compliance plan. The time limit for installing this afterburner was initially set at October 1, 1973, but was later extended until January 15, 1974, in PCB 74-200.

The Board in its March 28, 1988 interim opinion and order found that respondent, Elizabeth Street Foundry was in violation of Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1009(b) and 35 Ill. Adm. Code 201.141 and 201.144 in that it operated its facility since December 2, 1972 without required operating permits. The Board also found respondent in violation of Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1009(a) and 35 Ill. Adm. Code 212.321 in that respondent's air emissions are and were in excess of the maximum

¹ The Board notes that the information concerning Respondent's operations is taken from material filed with the Board in 1987; however, updated information was available from the Board's opinions and orders in Elizabeth Street Foundry, AS 89-2 and Elizabeth Street Foundry, AS 91-5.

² The transcript is cited as "Tr. at "; the respondent's report is cited as "Res. rep. at ".

allowed for that facility. Finally, the Board found that respondent was in violation of Ill. Rev. Stat. 1987, ch. 111 1/2, par 1042(a) for its failure to obey the Board's Orders of April 17, June 14, July 19, 1973 [in PCB 72-468] and the Board's Order of July 30, 1974 [in PCB 74-200].

The Board reviewed the factors enumerated in Section 33(c)³ of the Act and found with regard to the four factors in Section 33(c) at that time that there was no evidence in the record regarding the degree of injury or health problems caused by the emissions and that the facility served an important function in the neighborhood. (87 PCB 152.) In addition, the Board found that both sides failed to introduce evidence regarding the suitability or unsuitability of the location of the source and the Agency failed to introduce evidence concerning the technical practicality and economic reasonableness of reducing the emissions. (87 PCB 152.)

Therefore, rather than set forth in a final order the amount of any penalties or other conditions to be imposed for respondent's violations of the Act, the Board ordered the following:

1. Respondent shall contact:

Mr. Harry Pestine
Senior Economic Development and Retention
Specialist
c/o Illinois Department of Commerce and
Community Affairs
100 W. Randolph - 3-400
Chicago, IL 60601

(312) 814-3131

2. In consultation with the Agency, respondent shall discuss with Mr. Pestine or other appropriate person in the Department the availability of Governmental Assistance for conducting a stack test; and assistance in obtaining or financing the purchase of pollution control equipment, including plant modifications which might obviate the need

³ The Act has been amended since the Board's issuance of its interim opinion and order to include additional factors to be considered when determining what penalty is appropriate. However, the Board has held that those factors will be considered only in cases where the hearing was held after the effective date of the amendments. (People v. Sure-Tan, PCB 90-62, April 11, 1991.) Thus those factors need not be considered here.

for pollution control equipment, etc.; and information detailing whether respondent is located in an enterprise zone; etc.

3. Respondent shall report back to this Board and the Agency no later than August 1, 1988 concerning the substance of discussions with Mr. Pestine and/or others regarding the above.
4. The Board shall retain jurisdiction over this matter.

After being granted an extension of time, respondent filed its report on November 30, 1988. The report indicated that there were several financial assistance programs available which the respondent was eligible for. (Res. rep. at 2-3.) However, the financial assistance available required the respondent to raise a portion of the cost of improvements before financial assistance could be supplied. (Res. rep. at 3.) Respondent was unable to obtain financing for its share of the cost of improvements. (Res. rep. at 4.) Respondent then investigated the possibility of working with the University of Illinois to find an economically feasible method for compliance. (Res. rep. at 6.) The complainant did not file a response to the report filed by the respondent.

DISCUSSION

The Board has previously found the respondent in violation of Sections 9(a) and (b) as well as Section 42(a) of the Act. In addition, the Board found that respondent violated 35 Ill. Adm. Code 201.141, 201.144, and 212.321 of the Board's regulations. The Board's March 24, 1988 interim opinion and order allowed the respondent an opportunity to seek financial assistance to achieve compliance with the Act and the Board's regulations. Now, however, the Board must determine the penalty to be assessed against the respondent. Pursuant to the provisions of Section 42 of the Act the Board may impose a maximum fine of \$50,000 for each violation and up to \$10,000 for each day that the violation occurs. Thus, the maximum penalty could be millions of dollars in this case.

The respondent has been in violation since 1972. As noted in the Background section above, the Board has ruled on each of the factors in Section 33(c) of the Act. Based on the Board's rulings on each of the Section 33(c) factors, and the longstanding nature of the violations, the Board directs the respondent to pay a penalty of \$5000 into the Environmental Protection Trust Fund within 30 days of the date of this opinion and order.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Elizabeth Street Foundry shall pay the sum of five thousand dollars (\$5,000) within 30 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

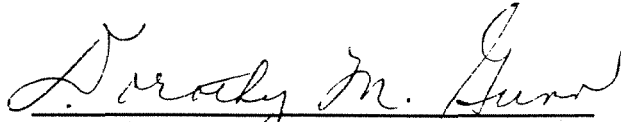
Elizabeth Street Foundry shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 3rd day of September, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board