ILLINOIS POLLUTION CONTROL BOARD
September 2, 1971

EFFINGHAM EQUITY	)	
	)	
	)	
v.	)	# 71-150
	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

Paul Goldstein, Pro Se,
Delbert Haschemeyer, of Springfield, for the Environmental Protection Agency

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

Effingham Equity manufactures fertilizers at its small plant in Effingham (R. 4). Particulate matter is emitted, especially during drying operations (R. 7). Pursuant to regulations adopted by the Air Pollution Control Board in 1967, Effingham submitted an Air Contaminant Emission Reduction Program, approved February 25, 1970, that promised the installation of control equipment beyond the existing cyclones (R. 8) by April 30, 1971 (See EPA Recommendation and Ex. A thereto). That date has come and gone. Effingham asks until September 1, 1972 to do what it promised to do by April of 1971. It has yet to purchase the necessary control equipment, much less to install it, and it asks to be allowed to wait until after the next busy season (January to June 1972) before doing so, citing the desirability of running additional emission tests because of a change in product formulation.

No satisfactory reason is given for the failure to meet the previous deadline. The only change in circumstances alleged to justify the delay is that the product formulation was changed. We cannot agree that the necessity for complying with an agreed control deadline is obviated by a change in product formulation, but in any event the change took place in July 1970 (R. 30), and any additional tests required by the change could and should have been conducted long ago. Had they been, any revision of the program could have been accomplished with no significant delay, since the change occurred immediately after receipt of the initial test results (R. 30). The company also suggests that its work has been postponed because of the desire to wait and see how successful others are in controlling similar plants elsewhere (R. 5). But this is no excuse; there is no doubt in the record that scrubbers are and have been available to do the job at a cost of only $12,000-$14,000 (R. 11), and no reason is suggested why the "little work" that must be done to adapt a scrubber to the plant (R. 17) is anything more than the ordinary debugging process; others have employed scrubbers already (R. 20). Moreover, by agreeing to control its emissions by April of 1971 the company conceded that the technology

was available; it has shown no technological reverses in the interim that could justify its refusal to live up to its commitment. And the fact that other companies may not have complied is no help; one cannot excuse default of one's own obligations by pointing the finger at others who may have sinned too.

The short of the matter seems to be that the company has sought to buy additional time because it is seriously considering going out of the business of fertilizer manufacture, which it finds unprofitable quite apart from the question of the cost of pollution controls (R. 27-28, 36, 38, 40, 43). But the time has passed for the company to make up its mind. It has had four years to bring itself into compliance, and that is long enough.

To deny the variance will not result in unreasonable or arbitrary hardship. First if as the company expects emission tests show the product change has brought the company into compliance (R. 30), no new control equipment will be required at all. Moreover, the business is highly seasonal; there is very little work to be done between now and January (R. 9), and therefore no significant loss of production would occur if the plant did not operate during that time. As for installation time, the company said it wanted to begin the job in mid-June and be done by September 1 (R. 10); with reasonably prompt delivery the installation might be completed before much production time is lost at all. And the company's own testimony is that the manufacture of fertilizer is so unprofitable that it may soon be abandoned voluntarily; it cannot be a great hardship to keep it closed for a time if that becomes necessary. Any hardship that may be suffered as a result of the denial was brought on by the company's own inexcusable failure to do what it promised.

The petition for variance is denied. This opinion constitutes the Board's findings of fact, conclusions of law, and order.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 2nd day of September, 1971.