

ILLINOIS POLLUTION CONTROL BOARD  
August 31, 1989

IN THE MATTER OF: )  
 )  
ELIZABETH STREET FOUNDRY, INC. ) AS 89-2  
an Illinois corporation, )  
(35 Ill. Adm. Code 212) )  
 )  
Petitioner. )

ORDER OF THE BOARD (by J. Anderson):

On August 15, 1989 the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss the petition for adjusted standard filed by Elizabeth Street Foundry, Inc. (petitioner) on June 30, 1989. The petitioner filed a response on August 28, 1989.

Essentially, the Agency objects to the petition because the petitioner's proposed adjusted standard, as set forth on page 6 of the petition, appears to request that the regulation of general applicability (35 Ill. Adm. Code 212.456) be altered in a general manner, not specifically to the petitioner's own operation. The Agency concludes, therefore, that the petitioner's request should be treated as a proposal for rulemaking, not an adjusted standard.

The Agency correctly states that the applicability of an adjusted standard is limited to the petitioner who has justified the standard in accordance with Section 28.1 of the Environmental Protection Act. Additionally, an adjusted standard is set forth by Board Order and does not expressly amend or alter the regulation of general applicability.

The petition's proposed language for the adjusted standard appears in the form of a regulatory amendment. While this is not the appropriate format, the relief sought by the petition is apparent from the full context of the petition. The petitioner and the Board have construed the June 30, 1989 filing as an adjusted standard. As the result, the Board may only grant relief as allowed by Section 28.1 of the Act. The Board notes that this adjusted standard petition was filed prior to the effective date of the Board's new adjusted standard procedural rules (35 Ill. Adm. Code 106.Subpart G, effective on July 10, 1989). However, increased scrutiny of petitions with respect to the requirements of those rules can certainly be expected in the future.

Since the proposed adjusted standard concerns a request for an alternative air standard, the Board finds that a hearing would be advisable. Such a standard could be the subject of a SIP revision in which case a hearing is required in order to comport

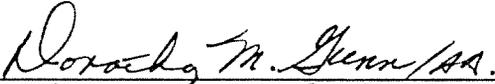
with federal law. At hearing, the petitioner shall present proposed language for a Board Order which would impose the requested adjusted standard and which would be consistent with the limitations and requirements of Section 28.1 of the Act.

For the above reasons, the Agency's motion is denied.

The Board notes that on August 25, 1989 the petitioner filed an Amendment to its petition in response to the Board's Order of July 13, 1989 which had requested the petitioner to explain how it intended to justify the proposed adjusted standard. This matter shall proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 31<sup>st</sup> day of August, 1989, by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board