

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1988

C.S. NORCROSS, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 87-206  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

MR. MICHAEL A. STICK, ESQ, APPEARED ON BEHALF OF PETITIONER, C.S. NORCROSS, INC.;

MR. JOSEPH E. SVOBODA, ESQ., APPEARED ON BEHALF OF RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon Petitioner, C.S. Norcross, Inc's., filing of a Petition For Variance on December 22, 1987. In sum, Petition requests a 15 month variance from this Board's nighttime prohibition against impact forging operations (set forth at 35 Ill. Adm. Code 901.105). Issuance of the requested variance would allow Petitioner to conduct forging operations from 1:00 a.m. to 7:00 a.m.

As noted above, this Petition was initially filed on December 22, 1987. On January 7, 1988, the Board issued an Order mandating the submission of additional information. On January 15, 1988, Petitioner supplied the additional data by filing its Response. On January 21, 1988, the Board accepted the Petition as an Amended Petition For Variance and set the matter for hearing. Hearing was held on March 18, 1988, at 138 E. Hall, City of Bushnell, McDonough County, Illinois; no members of the public attended. After hearing this matter was submitted to the Board without briefs; however, on March 14, 1988, the Agency filed its "Agency Statement". On March 24, 1988, the Board issued an Order construing the Agency Statement as the Agency Recommendation mandated by Ill. Rev. Stat. ch. 111 1/2 par. 1037. Pursuant to statute, Petitioner is entitled to a final decision on its Petition no later than May 16, 1988.

BACKGROUND

Petitioner has conducted a forging operations facility currently employing approximately 157 people at 195 N. Dean Street, Bushnell, Illinois for approximately 81 years. During

much of that time it operated on a 24-hour, three shift schedule. In October of 1983, this Board promulgated noise emission limitations, which limit impulsive sound levels at daytime and nighttime levels. Daytime emissions for existing impact forging operations are limited to 58.5 Leq. and nighttime emissions are limited to 53.5 Leq.

Because Petitioner's facility could not meet the nighttime standards the practical effect of the promulgated rule was to restrict Petitioner's hours of operation; [nighttime is defined at 35 Ill. Adm. Code 901.105 as "those 8 hours between 10:00 p.m. and 7:00 a.m. which are not part of the 16 continuous daytime hours]. On May 2, 1985, Petitioner obtained a site-specific rule change effectively allowing forging operation until 1:00 a.m. Monday thru Saturday. In the matter of C.S. Norcross and Sons Co., R83-31.

Petitioner's operation results in impulse sounds which are regulated as noted above. Metal is heated to approximately 2200 degrees Fahrenheit, then inserted between dies; pressure is then applied. The pressure is supplied by repeated impact of the upper and lower die, which is fastened to an anvil. The anvil, a guided ram and the attached machinery are commonly known as a "forge hammer". The sounds produced by the forge hammer are impulsive in nature and originate primarily from the impact between the upper die and the lower die. Petitioner's facility utilizes thirteen forging hammers ranging in size from 800 to 5,000 pounds, the largest hammers producing the most noise. R. 26. It should be noted that Petitioner's two largest hammers [4,000 pounds and 5,000 pounds] are not involved in this Petition. Pet. p. 10; R. pp. 26, 27.

#### ENVIRONMENTAL IMPACT

Although it is true that noise emissions from Petitioner's facility are not an immediate danger to health, noise emissions are regulated by the Environmental Protection Act and by Board regulations. At page 5 of the Petition For Variance, it is admitted that in 1983 forty-five residences had potential exposure to sound levels in excess of the maximum allowed under 35 Ill. Adm. Code 901.105(c). Petitioner asserts that the total number of residences exposed to excess emission has decreased -- although no lesser figure is given. Pet. p. 6.

It should be noted that in preparing its variance application Petitioner consulted with the neighboring community. According to the testimony of John Gormley, at least one resident from each neighboring household was solicited in order to ascertain and accommodate community concerns. R. 30. This explains why the largest hammers are not included in this variance. With one exception the community favors granting Petitioner the requested variance. Furthermore, it should be

noted that attached to the Petition For Variance, Petitioner has included the signatures and addresses of 41 neighbors, all residing within 1500 feet of the forging plant and all supporting the requested variance. The one exception was merely an inquiry which sought to ensure that Petitioner would not operate the two largest hammers as a result of the variance. As noted above the two largest hammers are not involved in this variance request and will not be operated between 1:00 a.m. and 7:00 a.m. Additionally, the record of hearing indicates that the public did not attend the hearing -- notwithstanding proper notice. This also indicates a lack of community opposition to the variance.

Noise emissions of this sort are often in the nature of a nuisance-type of activity and the Board is not unmindful that the community supports the proposal.

Notwithstanding, the Board is also aware that Petitioner is operating on the third shift despite this being a violation of Petitioner's site-specific rule and despite the violation of this Board's general regulations. R. 46. Petitioner should be advised that violations of this order will not be tolerated.

#### EFFORTS AT COMPLIANCE

As noted above, Petitioner's facility is old. Nonetheless, Petitioner has indicated several attempts at lowering emissions. Petitioner's witness Mr. Dale Stump, outlined several attempts to limit sound emissions including the use of acoustical absorbers, pads, mats and sound/shock absorbers. R. 50. Additionally the facility is looking for a way to segregate the loudest operations (the wheelabrator) from other, less noisy operations. However Mr. Stump also testified that no final decisions have, as yet, been made.

#### HARDSHIP

Petitioner has introduced much evidence that it is suffering hardship based upon the current standards. Specifically, the company must forgo realizable profits as a result of the nighttime noise limitations.

Because customer orders cannot be adequately filled, business is slipping away. Petitioner has already lost several major customers. R. 13. The loss of these customers includes not only short term injury but also long term losses in terms of unrealized future revenues (the amount of current lost sales was estimated at \$1.5 - \$2 million). This does not include additional, future business turned away for inability to accept the additional contracts. Notably, Petitioner is too heavily burdened to fill orders from its parent company. R. 10. Unfilled orders from the parent company, alone, amount to losses of \$120,000 - \$150,000/month.

Because Petitioner has been unable to operate during nighttime it has been forced to utilize overtime hours among its current workcrew. Petitioner is averaging fourteen hours of overtime per man per week. R. 11. This has added to financial pressures due to additional costs of production.

The main purpose of the requested variance is to provide Petitioner with sufficient time to make a final business decision as to whether there is adequate, continuing business to justify increased permanent production. Petitioner states that it would examine the feasibility of designing a new facility which would be located far from residential uses, with a metal structure and which would afford the use of several baffling devices. R. 18.

By allowing Petitioner to operate according to the requested variance, Petitioner claims it will be able to reduce its backlog of orders [satisfying existing customers]; and accept new orders [enhancing its ability to attract continuing new businesses]. This, it is asserted, will correct a current poor cash flow and provided the necessary information for a decision on whether to build the additional facility. At the end of the variance, Petitioner may decide to construct the new facility or may decide against it -- but Petitioner will discontinue its third shift and return to operations congruent with the conditions set forth in R83-31.

Whatever ambiguities remain concerning Petitioner's plant(s) and operations, the fact remains that at the end of 15 months Petitioner will once again be in compliance.

By all evidence presented, Petitioner has been a good neighbor and citizen. Its facility is old -- but working -- and orders are picking up. Short term expansion of Petitioner's operation hours is expected to generate many new jobs and income for the community; long term plant construction will generate permanent jobs and growth. Petitioner's anticipated period of non-compliance is short and any adverse environmental impact would be minimal. The request for variance is granted.

The Board notes that Petitioner's plan of (eventual) compliance is not truly a compliance plan; rather it is solely a promise to halt nighttime operations upon the expiration of the variance. The Board's action in granting this variance is limited to the unique facts of this case, only. And should not be construed as precedence concerning a compliance plan of this sort.

#### ORDER

C.S. Norcross, Inc., is hereby granted variance from 35 Ill. Adm. Code 901.105(c) for its manufacturing complex located at 195 N. Dean Street, Bushnell, McDonough County, Illinois, subject to the following conditions.

1. This variance shall expire on July 31, 1989.
2. Petitioner shall not operate its 4,000 lb. or 5,000 lb. forging hammers, or any similar such equipment during the nighttime hours between 1:00 a.m. and 7:00 a.m.
3. Petitioner shall conduct its operations such that the noise emission measured at the nearest class 'A' land is no greater than 70 Leq.
4. Petitioner shall conduct its facility in compliance with all applicable rules of the Board and the Environmental Protection Act.
5. Within forty five (45) days of the date of this Order, the Petitioner shall execute a Certificate of Acceptance and Agreement agreeing to be bound by the terms and conditions of this variance which shall be sent to:

Illinois Environmental Protection Agency  
Division of Water Pollution Control  
Compliance Assurance Section  
2200 Churchill Road, P.O. Box 19276  
Springfield, Il 62794-9276

This variance shall be void if Peitioner fails to execute and forward the certificate within the forty five day period. The forty five day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We), C.S. Norcross, Inc., having read the Order of the Illinois Pollution Control Board, in PCB 87-106, dated May 5, 1988, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
By: Authorized Agent

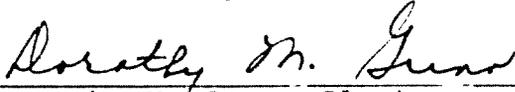
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5<sup>th</sup> day of May, 1988 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board