

ILLINOIS POLLUTION CONTROL BOARD
July 22, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
 v.) PCB 75-418
)
)
CITY OF BREESE,)
)
)
 Respondent.)

MR. BARRY FORMAN, Assistant Attorney General, appeared for the Complainant;
MR. BERNARD G. HEILIGENSTEIN, appeared for the Respondent.

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

On October 28, 1975 the Environmental Protection Agency (Agency) filed a Complaint against the City of Breese (City), located in Clinton County, Illinois. The subject of the Complaint is coal-fired Boiler No. 2 at the City's power plant. The Complaint alleges three violations:

1. Violation of the particulate standards of Rule 2-2.53 of the old Air Regulations and Section 9(a) of the Act from July 1, 1970 to May 30, 1975;
2. Violation of the particulate standards of Rule 203(g) (1)(B) of the Board's Air Pollution Control Regulations and Section 9(a) of the Act from May 31, 1975 to October 28, 1975; and
3. Violation of the permit requirement of Rule 103(b)(2) of the Air Pollution Control Regulations and Section 9(a) and(b) of the Act from April 1, 1973 to October 28, 1975.

A hearing was held on December 15, 1975 in the City Hall of Breese. Mr. Martin Johnson, the City's Superintendent of Utilities verified the figures on page 2 of the Comp. Ex. #7 (R. 11) which

is a copy of the Board Order in PCB 73-209 (April 10, 1975). This case was a variance request concerning Boilers No. 1 and 2. The variance for Boiler No. 2 was denied. It is admitted that Boiler No. 2 has no particulate controls (R. 14). Therefore, given the admission of the accuracy of the calculations of particulate emissions at page 2 of Comp. Ex. #7, there can be no doubt that to the extent of the Boiler's operations, it did exceed the standards of both the old Rule 2-2.53 and Rule 203(g)(1)(B), and Section 9(a) of the Act. However, the Supreme Court, in Commonwealth Edison Company v. Pollution Control Board, 62 Ill 2d 494, 343 N.E. 2d 459 (1976) remanded to the Board Rule 203(g)(1) of the Air Pollution Control Regulations. It would therefore be inappropriate for the Board to find a violation of that Rule in this case.

It is also established that no operating permit had been obtained for Boiler #2. As the Board Order PCB 73-209 states, the City did apply for operating permits but the application was denied because of the calculated particulate violations. There is no doubt that the City did operate in violation of Rule 103(b)(2) of the Air Pollution Control Regulations and Sections 9(a) and (b) of the Act.

As for the violation of the particulate standard from July 1, 1970 through May 30, 1975 the chief factor of mitigation is the apparent good faith effort which the City made to retire its coal-fired boilers. The major problem was solved by the electrical interconnection with Illinois Power Company operative on March 28, 1976 (R. 62). The City has previously attempted to purchase a diesel engine to replace the coal-fired boilers but the bond issue failed (R. 58). Coupled with the high cost of an electrostatic precipitator and problems with fuel allocations which made conversion uncertain, consideration of the 33(c) factors show strong mitigation. A municipal power plant carries a high social and economic value where alternative sources of electricity are simply not available. Also important is the fact that the operation of this boiler apparently did not cause any citizen complaint (R. 61). Given these facts the Board finds that a penalty would not aid in the enforcement of the Act in this particular case.

For the same reasons the Board finds no penalty advisable for the City's failure to obtain an operating permit. It is noted that the City did apply for a permit on January 23, 1973, which is prior to the period of the violation found. It would be unnecessary in this case to penalize the City for failing to conform to a standard which has already been found above to have represented an unreasonable hardship.

The City of Breese has shown good faith. The City's inability to raise the funds necessary to allow the retiring of Boiler #2 is understandable in view of the financial difficulties encountered by most small municipalities. The establishing of an interconnection was also carried out in good faith. The City has now committed to converting Boiler #2 to oil (R. 57). Respondent's Exhibit No. 1 is an estimated completion schedule for that project. Installation is estimated to be completed on December 20, 1976, at which time the City should be in compliance with the Board's Regulations. The Board will require the City to submit to the Agency, within 60 days, a proposal for Boiler #2 so that a variance or a permit may be obtained.

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Respondent City of Breese is hereby found to have violated Rule 2-2.53 of the old Air Rules, Rule 103(b)(2) of the Air Pollution Control Regulations, and Section 9(a) and (b) of the Environmental Protection Act.
2. That portion of the Complaint alleging violation of Rule 203(g)(1)(B) of the Air Pollution Control Regulations is hereby dismissed.
3. If Respondent City of Breese operates Boiler #2 prior to its conversion to oil the City of Breese shall promptly submit a report to the Agency detailing the extent of the emergency and the resulting operations.
4. Respondent City of Breese shall, within 60 days of the date of this Order, submit to the Agency a proposal regarding the conversion of Boiler #2 from coal to oil fuel so that a permit or a variance may be obtained.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24th day of July, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board