

ILLINOIS POLLUTION CONTROL BOARD
March 7, 1974

ABEX CORPORATION, AMSCO DIVISION,)
)
) Petitioner,)
)
 v.) PCB 73-525
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Petitioner Abex Corporation operates a manganese steel foundry in Chicago Heights, Illinois. On December 6, 1973 the Company filed a Petition requesting a three month variance from Rule 203(b) and (c) of the Air Pollution Control Regulations, to continue its torch cutting operations while completing installation of a baghouse control system. Petitioner states that the particulate matter emitted to the atmosphere from the torch burning operations is 72.7 lbs./hr. The emissions are primarily metallic oxide and were being vented directly to the atmosphere without controls. The allowable emission rate under Rule 3-3.111 of the Air Rules which was effective to December 31, 1973, was 39.7 lbs./hr. Since Petitioner's facility was not in compliance with Rule 3-3.111 by April 14, 1972 Petitioner is required to meet the Standards of Rule 203(a) of Chapter 2, Part II of the Rules following December 31, 1973. The allowable emission rate under Rule 203(a) is 17.9 lbs./hr.

Rule 203(b) and (c) are not applicable, but the Agency has regarded this Petition as a request for variance from Rule 3-3.111 until December 31, 1973 and a request for variance from Rule 203(a) until February 28, 1974.

On February 1, 1973 Petitioner commenced a program to bring its operation into compliance with the Regulation. The program was approximately 80% complete when Petitioner filed the request for a variance. Petitioner states that the baghouse collection system will control 99% of the emissions. The Agency substantially agrees with this allegation and believes that the emission rate will be reduced to less than 1 lb. per hour. This is equivalent to an annual reduction of 65 tons of particulates. The cost to Petitioner for installation of this system will be around \$250,000.

The plant is located in an area of heavy industry and the Agency has received no citizen complaints.

The Agency states that the timetable proposed by Petitioner is reasonable but recommends a denial of the variance because of delays in getting underway with the project. The EPA in its Recommendation states:

"Petitioner has been violating applicable emission standards for quite some time. It did not begin to plan its compliance program until February 1973. The Agency is strongly in favor of Petitioner's current efforts to comply with Standards. The Agency wishes to take no position which may delay or interfere with this greatly needed project. However, Petitioner's past delays preclude the Agency from recommending that the variance be granted. The Agency considers a variance to be a shield from prosecution. This shield is to be allowed only in those circumstances when to hold otherwise would create an arbitrary or unreasonable hardship. The Agency believes that the major reason Petitioner cannot comply with applicable standards is due to past delay."

Petitioner has not suggested any reason for the delay and we must conclude that Abex has failed to carry its burden of proof in that regard. Abex does say that "an extreme hardship would be placed upon this steel foundry if the burning operations were curtailed in any manner prior to the completion of the control system." Our denial of a variance is not in itself an order to curtail operations. Our Order merely indicates that Petitioner has failed to establish that it should be free from prosecution for its excessive emissions. Whether a prosecution will actually occur we have no way of knowing, and if a complaint is in fact filed, Abex may still prove a reasonable excuse for the delay in its program.

It is the burden of the Petitioner to prove that compliance with the Rule would impose an arbitrary or unreasonable hardship.

Since no reason is given for the delay in instituting the control program, we find that Petitioner has failed to sustain its burden of proof and the variance will be denied.

ORDER

It is the Order of the Pollution Control Board that the Petition for Variance be denied without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 7th day of March, 1974 by a vote of 5 to 0.

Christan L. Moffett