

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 1972

IMPERIAL SMELTING CORPORATION )  
 )  
 ) #72-235  
 v. )  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

OPINION AND ORDER OF THE BOARD. (BY SAMUEL T. LAWTON, JR.)

On March 28, 1972, we granted petitioner, a secondary zinc processing facility, located in Chicago, Illinois, a variance until June 30, 1972 from compliance with the Particulate Emission Regulations, Rule 3.3-111 of the Rules and Regulations Governing the Control of Air Pollution, in order that petitioner could install certain air pollution abatement equipment that would bring it into compliance by the end of the variation period. (#71-393) The nature of petitioner's operation is set forth in detail in our March 28, 1972 opinion. Essentially, petitioner's plan for pollution control contemplated the installation of new Dynaclone baghouses on two rotary furnaces, the installation of after burners to burn off hydrocarbons and the utilization of a settling chamber to collect larger particles. These combined facilities, together with abatement equipment presently in use, would receive off gases from the rotary and kettle furnaces in use and were **anticipated** to bring petitioner's operation into compliance with the relevant Regulations.

In granting the variance, we imposed conditions with respect to reporting stack tests, the posting of a bond and the requirement that production be at a reduced rate as represented by petitioner until the newly installed abatement equipment was operative.

On June 9, 1972, four days before the expiration of the variance granted, petitioner filed a new petition for variance, seeking to extend the variance until October 30, 1972. On August 15, an amended petition for variance was filed requesting extension of the variance to December 31, 1972. The Agency has filed a recommendation noting that the petitioner has failed to comply with the conditions upon which the original variance was granted, and proposes that the variance be granted only until September 30, 1972.

We grant petitioner a variance to November 30, 1972 subject to the terms and conditions hereafter set forth.

The petition for variance details the difficulties encountered by petitioner in obtaining the bag houses needed for the abatement program and the problems resulting from their operation once installed. The original bag house that was ordered appears to have been too small and generated an inordinate amount of heat which curtailed its operation. The Phase One bag house allegedly is unable to accomplish the work for which it was anticipated but can be operated if selected raw materials are charged into the rotary furnace connected with the bag house. The second bag house is at a point where it can be put on line although problems similar to those with bag house #1 are anticipated. Accordingly, a modified program has been proposed pursuant to which Phase Two of the operation will be reduced in capacity and bag house #2 will receive the emissions from three kettle furnaces. An additional bag house will be constructed to handle the rotary furnace and collector kettle, its after burner and a melt-down kettle. The plan, accordingly, becomes a three phase bag house operation. However, because of additional space and equipment problems and the need for arrangements for power supply, additional time is requested to finalize the program. Petitioner's position is summarized in paragraph 15, as follows:

"15. That additional time; to wit, December 31, 1972, is needed by Imperial to complete its total pollution control facility, so that it can economically operate in compliance with the rules and regulations governing the control of air pollution, said time being required for the following reasons.

- a. Phase One Bag House No. 1 is functional and on in-line operation, but time is needed to complete the stack test. The original stack test that was to be performed had to be postponed, as Imperial was requested to install a hood at the charging door of the rotary furnace to collect tramp discharge when the furnace door is opened for charging. The hood has now been completed and the City of Chicago, Department of Environmental Control has been notified that Imperial is again ready for said test.
- b. That the modified Phase Two Bag House No. 2 is ready to be put on in-line operation, that time is needed for the corrections and adjustments that will occur in the day by day operation of said unit and that after the unit is operational it is necessary to make the arrangement for the stack test required by the Pollution Control Board.
- c. That basically the length of time heretofore prayed for is needed to fully complete Phase Three Bag House No. 3.

That due to past experience, Imperial feels that December 31, 1972, is an optimistic target date; however, it is the desire of Imperial to force itself to utilize every effort in its power to meet said date, or again, then have to petition and inform the Pollution Control Board and the Environmental Protection Agency that it at least has substantially met said date and completion will come shortly thereafter."

Petitioner represents that while work is progressing and until the pollutional control program is fully completed, it will operate its plant at a reduced rate of production and with selected material so as to minimize pollutional emissions. Petitioner alleges that it would be unable to meet the emission standards without the installation of the equipment proposed and that a shut-down during the period of installation would result in the discharge of 100 employees and the deprivation of petitioner's product from the market with resulting hardship on the community as well as petitioner. The recommendation filed by the Agency notes that while the original variance allowance was conditioned on the filing of monthly reports, the performance of stack tests, the operation of a reduced rate of production and the furnishing of a performance bond or other adequate security, no bond has yet been furnished and the Agency is not aware of any stack tests that have been performed.

In its present petition, petitioner now asked to be relieved of the bond requirement. The Agency believes that the operation of the two bag houses originally contemplated by the first variance can be operational in two months. It also notes that while the request for variance is made to December 31, 1972, no equipment for Phase Three has yet been ordered, and that because of the absence of a firm control program, the Agency is not able to evaluate the amended petition, but believes the December 31, 1972 completion date to be optimistic.

With some degree of reluctance, we grant the extension of variance to November 30, 1972. Petitioner has compounded its problem by failing to apply for the extension until the end of the original variance period and is accordingly not now protected against prosecution by the Agency. However, we are satisfied that petitioner has pursued its program although perhaps not with the diligence we would have expected and no useful purpose would be served by denying it the small additional period of time. We will retain jurisdiction of this matter. If petitioner is unable to complete its program, within this time, it will file with this Board a new petition for variance prior to November 1, 1972, stating the exact status of its program, what, if anything, remains to be done and the date on which completion can be anticipated.

We will enter such further and additional orders, including a possible penalty as may be appropriate in the premises in the event a further variance period is sought. This variance extension is also conditional upon all of the matters originally provided in the earlier variance, including the filing of reports, the conduct of stack tests, the limitation on production activity, and the filing of a bond.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that Petitioner, Imperial Smelting Corporation, be granted a variance from the provisions of Rule 3.3-111 of the Rules and Regulations Governing the Control of Air Pollution until November 30, 1972, subject to the following terms and conditions:

1. Imperial shall diligently pursue the installation of the control equipment outlined in its petition for variance and the record in this cause.
2. Imperial shall operate at a reduced rate of production as described in its petition and the record in this cause, until the operation of the above-described control equipment.
3. Imperial shall submit written reports to the Agency each month until the above-described control equipment is installed and operating. The first report shall be filed within twenty (20) days of the date of this order. In addition, Imperial shall submit a final report to the Agency within thirty (30) days after the described control equipment is operable.
4. Imperial shall perform stack tests on each piece of control equipment after said equipment is operable. The results of said tests shall be certified by an independent testing firm and shall be made a part of the final report referred to in paragraph 3 of this Order.
5. Imperial shall file with the Environmental Protection Agency a performance bond or such other security as the Environmental Protection Agency may deem appropriate in the sum of \$10,000 to guarantee installation and performance of its control equipment in compliance with this Order. The bond shall be mailed to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

6. If petitioner concludes that it will be unable to complete its abatement control program, as modified, prior to the termination of this variance it will file a status report with the Board and petition for extension of variance prior to November 1, 1972. The Board retains jurisdiction of this cause for such other and further orders, including the imposition of a penalty as shall be appropriate in the premises.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was entered on the 21 Day of September, 1972, by a vote of 4 to 0.

Christan Moffett