

ILLINOIS POLLUTION CONTROL BOARD  
October 3, 1972

SOUTH SIDE FOUNDRY COMPANY )  
 )  
 ) #72-105  
 v. )  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

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 )  
 ) #72-187  
 v. )  
 )  
 SOUTH SIDE FOUNDRY COMPANY )

MR. PRESCOTT E. BLOOM, SPECIAL ASSISTANT ATTORNEY GENERAL, ON  
BEHALF OF ENVIRONMENTAL PROTECTION AGENCY  
MR. RICHARD J. TROY, ON BEHALF OF SOUTH SIDE FOUNDRY

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

On March 21, 1972, in Case #72-105, petition was filed by South Side Foundry Company (referred to throughout this Opinion as "petitioner") to permit operation of its Peoria foundry in excess of permissible particulate limits as provided by Regulation. The Agency recommended that the variance be denied, or if granted, that it be subject to the installation of spark arresters, the submission of a firm compliance program within thirty days of the Board's decision and the posting of a performance bond. Waiver of the 90-day statutory provision for the rendition of a variance order has been received.

On May 1, 1972, in Case #72-187, complaint was filed by the Environmental Protection Agency against South Side Foundry Company alleging that on or about July 21 and July 22, 1971 and between January 13, 1972 and the date of filing of the complaint, Petitioner caused, threatened or allowed the discharge of particulate matter, gaseous emissions and other contaminants, in violation of Section 9(a) of the Act and Rule 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution (Air Rules), and violated Rules 2-2.3 and 2-2.4, in failing to file a Letter of Intent and Air Contaminant Emission Reduction Program. Penalties in the maximum statutory amount are sought.

On motion of the Agency, the two proceedings were consolidated by order of the Hearing Officer. Hearing was held on August 28, 1972.

Petitioner operates a gray iron metal casting plant in Peoria employing 25 people. Melting is done in a four-ton per hour, 36" diameter cupola, averaging approximately seven tons per day. According to the variance petition, South Side Foundry melts 1,680 tons of metal per year, uses 8,400 tons of sand annually in its molding operation and emits 146 pounds per day of particulates, (82 pounds per day of aerosols defined by petitioner as containing particulates under 50 microns, and 64 pounds per day of suspendable material). In addition, 1,930 pounds of carbon monoxide are emitted daily. All of the foregoing emissions result from a seven ton per day liquid iron production purportedly accomplished during a two-hour per day maximum melting period.

Petitioner has no proposed specific emission control program to bring itself into compliance with the relevant statutory and regulatory provisions. It indicates that it is giving consideration to four alternative abatement processes: a wet cap attachment with baghouse for collecting particulates with afterburners to reduce CO emissions, a Venturi-type collector and afterburner, electric induction-type melters or high efficiency-type gas or oil reverberatory melters.

Petitioner alleges that 15 months will be needed for studies, development of casting criteria, choice of method to be pursued, ordering of equipment and installation. Neither in its petition nor in the course of the hearing has petitioner indicated which method, if any, it anticipates adopting, or what progress has been made in developing a program of compliance, notwithstanding a period of five months having elapsed between the filing of the variance petition and the hearing. The hearing brought out that the foundry was a family-owned business which enjoyed a successful operation for many years prior to 1960, at which time the foundry became the victim of severe mismanagement, which it appears to have remained subject to until September of 1971, when management and ownership changes took place, and petitioner again resumed operation on a profitable basis.

Mary L. McCarthy testified as a witness for petitioner (R.8). She has been president of South Side Foundry Company since July of 1971. The business had previously been operated by her father and upon his death in 1954, by her three brothers. Ownership of the business has been entirely within the McCarthy family and included Mary L. McCarthy as a part owner prior to her designation as corporation president. Since taking office, Miss McCarthy has sought the aid of various professionals in endeavoring to remedy the unsatisfactory operation of the plant, but no definitive program of pollution control has been embarked upon or as yet proposed. This

witness testified to the mismanagement of the company by her brothers, including the payment of exorbitant salaries and unauthorized diversion of funds. Since Miss McCarthy's assumption of the corporate presidency, this situation has ceased, the company is presently solvent and in good standing with the Illinois Secretary of State.

Walter E. Walz testified on behalf of South Side Foundry Company (R.27), describing the condition of the foundry as of May, 1972 as having reached "the point of no return" (R.30). He described the virtual absence of maintenance and housekeeping procedures and the general sloppy way in which the foundry had been operated. In recent months, some improvement has resulted from gas torch firing of the cupola in lieu of the previous use of wood firing (R.35). This witness discussed several of the emission control alternatives proposed in the variance petition. The wet cap attachment to the baghouse (R.46, Pet. Ex. 2), a Brown Bovari Coreless-type Melting Furnace (R.52, Pet. Ex. 3) and a smaller coreless type electric furnace (R.55, Pet. Ex. 4) were described in terms of operation and installation. According to Walz, all proposals would require at least one year for order, delivery and installation (R.59).

James F. Powell, metallurgist consultant employed by petitioner, testified on its behalf. He stated that no spark arrester had been installed in the stack and that sparks were emitted on occasion from the cupola operation.

The foregoing was the extent of petitioner's case in support of its variance petition. No representation was made that any specific abatement program would be pursued or what time schedule of installation petitioner anticipated it would follow in order to bring its operation into compliance.

Witnesses for the Environmental Protection Agency, in support of the enforcement action and in opposition to the variance allowance, included John W. Tomic (R.61) who testified that he was the operator of a gas station approximately 125 feet from petitioner's foundry (R.65), that he had observed sparks and smoke emanating from the foundry stack between July of 1970 and July of 1971 (R.64) and that he refrained from filling automobile gas tanks with gasoline during periods when sparks were observed for fear that an explosion might result (R.66). During a period of several months prior to the hearing, this witness observed similar emissions approximately four times per month when particulates dropped on the customer's cars (R.67). Some improvement was noted shortly prior to the hearing.

Douglas Winters testified on behalf of the Agency (R. 93). He operated a tavern in the vicinity of the foundry, which burned down on October 27, 1971, possibly as a result of sparks emitted from petitioner's operation.

Exhibits introduced by the Agency included pictures of petitioner's stack and alleged emissions from it, which were not particularly helpful. Agency Exhibit 7 contains a report of inspection of petitioner's foundry made on April 3, 1972 by R. C. Wennmacher, an agency employee. On the basis of standard emission factors, computed on a seven-ton per day melt, emissions were computed at 14.8 pounds per hour against an allowable emission maximum of 3.54 pounds per hour. This exhibit was received without objection and no effort was made to refute it (R.104).

Petitioner's principal defense to the enforcement action was the incompetent operation existing prior to Mary McCarthy's selection as corporate president, which she now appears endeavoring to improve. However, it will be noted that notwithstanding Miss McCarthy's assumption of control in 1971, and her laudable desire to improve a bad situation, nothing has been done to date by way of a definitive program to bring petitioner's operation into compliance, nor has anything by way of defense or extenuating circumstances been submitted. While the evidence of nuisance and particulate violations is somewhat meager, petitioner concedes that it has failed to file an approved Air Contaminant Emission Reduction Program and has operated for many years without emission control equipment of any kind (R.22, 106). Likewise, a nuisance on the community has been demonstrated resulting from spark and particulate emissions affecting the comfort and safety of persons and property in the vicinity of the foundry.

The Agency's contention that sparks from petitioner's operation may have caused the fire destroying a nearby tavern is not completely convincing on the state of the record. However, there is no question that sparks from the foundry have been emitted over a long period of time and the company does agree to obtain a spark arrester which we will order installed within two weeks of the date of this order. Violation of particulate regulations is not denied although evidence of specific numerical measurements manifesting violation is found only with respect to the April 3, 1972 inspection.

While we are not unmindful of the efforts being made by Miss McCarthy in recent months to correct a bad situation, and are hopeful that her present efforts will be rewarding, the record does not furnish us with any defense or adequate extenuating circumstances with respect to the enforcement action.

The Respondent in the enforcement action is a corporation which has been in existence throughout the entire period of the alleged offenses. There has been a continuity of family ownership and control. An assessment of penalty against the corporation would enable it to take such steps against its former officers and others as would be appropriate to receive reimbursement from those who have been guilty of the flagrant disregard of pollution control regulations. While Miss McCarthy has been a corporate officer for a relatively short time, she has been a stockholder for many years and the family has been in ownership throughout the entire period of violation.

The factual situation in the present case is not like that in Environmental Protection Agency v. Lindgren Foundry Co., #70-1, 1 PCB 11, September 25, 1970, where we declined to impose penalties because the corporation, at the time of trial, was owned by an entirely different entity than those who were responsible for the violations proven. Here, there has been continuity of ownership over the entire period of violation.

With respect to petitioner's petition for variance, the record is completely devoid of any substantive testimony or evidence enabling us to justify a grant of such relief. Petitioner has presented no specific program nor plan of installation upon which even a limited departure from the Regulations could be premised. In Chicago-Dubuque Foundry Corporation v. Environmental Protection Agency, #71-130, 2 PCB 65, June 28, 1971, we denied a variance petition because of the absence of a definitive compliance program. We must do the same in the present case.

On the state of the record, we assess a penalty in the amount of \$3,000.00 for failure to submit a Letter of Intent and an Air Contaminant Emission Reduction Program (Rules 2-2.3 and 2-2.4) and for violation of particulate regulations (Rule 2-2.54) as well as the causing of air pollution in violation of Section 9(a) of the Environmental Protection Act. In arriving at this penalty figure, we have given consideration primarily to the company's long and unjustified delay in taking action of any nature to abate its pollutional discharge and its failure to have a program of compliance, at this late date. The original petition for variance was filed in March of 1972, over six months ago, yet nothing appears in the record to indicate that petitioner is any further along with an emission abatement program than it was when the original petition for variance was filed.

We direct the company to submit a program of compliance within 30 days of the date of this Order, expressly setting forth a method of abatement control which the company will pursue and the dates

on which installation will be completed. We will require that a bond in the amount of \$10,000.00 be filed with the Environmental Protection Agency assuring that this program will be submitted. We order the installation of a spark arrester within two weeks of the date of this Order. We shall retain jurisdiction of this case for such other and further orders as may be appropriate in the premises.

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

IT IS THE ORDER of the Pollution Control Board:

1. The petition for variance of South Side Foundry Company is denied.
2. Penalty in the amount of \$3,000.00 is assessed against South Side Foundry Company for violations of Rules 2-2.3, 2-2.4 and 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution, because of South Side Foundry Company's failure to file a Letter of Intention and Air Contaminant Emission Reduction Program, and exceeding particulate regulations, all as provided in said Regulations and for the causing of air pollution in violation of Section 9(a) of the Environmental Protection Act. Penalty payment by certified check or money order shall be made payable to the State of Illinois, Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.
3. South Side Foundry Company shall submit to the Board and the Agency within 30 days from the date of this Order, a specific program for Air Contaminant Emission Control and abatement of particulate and carbon monoxide emissions from its foundry operation, including a specific program of purchase, acquisition and installation of equipment, to bring its foundry operation into compliance with all relevant regulations and statutory provisions relative to the control of air pollution.
4. South Side Foundry Company shall provide a bond in the amount of \$10,000 payable to the Environmental Protection Agency and mailed to Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706. The bond shall be in form satisfactory to the Agency and shall guarantee that the program of compliance required by paragraph 3 of this Order shall be submitted in the time provided and in the form required.

5. The company shall install a spark arrester in its stack preventing any emission of sparks into the atmosphere, within two weeks from the date hereof.
6. The Board retains jurisdiction for such other and further orders as are appropriate, based upon the foregoing provisions of the Order.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 3<sup>rd</sup> day of October, 1972, by a vote of 5 to 0.

Christan Moffett