

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1972

CHICAGO-DUBUQUE FOUNDRY CORPORATION)
)
) #72-302
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

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

On October 14, 1971, we granted Chicago-Dubuque Foundry Corporation a variance until May 12, 1972, allowing petitioner to operate its cupola located in East Dubuque, Illinois, in excess of particulate emission limits, subject to requirements of installation, assessment of emissions from the core oven and shake-out areas, bonding, and reporting as specified in our Order.

On May 10, 1972, pursuant to stipulation between the parties, the variance was extended to July 12, 1972 because of delays in equipment delivery. Subsequently, we received a stipulation between petitioner and the Agency, authorizing extension of the variance to September 12, 1972. By our Order of July 18, 1972, we characterized the stipulation as a petition for additional variance, notwithstanding our earlier extension on the basis of a similar stipulation. In our Order, we noted that the provisions of the Environmental Protection Act with respect to public notice and comment, require the stipulation to be so characterized. A new number was assigned to the case and proper notice was given. Combined with this extension proceeding was another stipulation filed on December 7, 1971, seeking modification of the October 14, 1971 Order with respect to assessment and control of the core oven and shakeout area. No hearing was held on the petitions.

Our October 14, 1971 Order granting the original variance was in anticipation of the purchase and installation of control equipment including a baghouse that would bring petitioner's cupola emissions into compliance with the existing Regulations. The passage of time, through no fault of petitioner, has mooted the petition for extension of the variance to September 12, 1972 and presumably, the equipment to be installed pursuant to the variance allowance is already in operation. Furthermore, installation by May 12, 1972 of a Despatch Oven Fume and Smoke Incinerator to control emissions from the core oven and a hydrostatic precipitator to control shakeout emissions has mooted paragraph 1(b) of our October 14, 1971 Order requiring assessment of emissions from the petitioner's core oven and shake-out area. Waiver of this provision had been sought by the December 7, 1971 stipulation. Recommendation of the Environmental Protection Agency proposing extension of the variance to September 12, 1972 was received by the Board on September 26, 1972.

The date on which the Agency's recommendation was prepared is not evident from the documents received, although it appears to have been prepared prior to September 12, 1972. It details the installations being made during the month of August, 1972, with respect to the baghouse to control cupola emissions and states "neither the Agency nor the petitioner anticipate any problems in meeting emission regulation limits after September 12, 1972." The recommendation also notes that petitioner has complied with all conditions of our original Orders with respect to the posting of bonds and the submission of progress reports. No citizens' response has been received relating to the variance extension.

While the granting of the variance extension to September 12, 1972 has been mooted by the passage of time and we assume that the operation of petitioner's foundry presently complies with the relevant particulate regulations, we nevertheless grant the variance to September 12, 1972 to protect petitioner from any assertion of violation that might have occurred between the expiration of the original variance on July 12, 1972 and September 12, 1972, the date when compliance must be assumed. Furthermore, petitioner's possible exposure to liability under the bond posted to assure compliance with the variance allowance requires the entry of an extension Order.

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

IT IS THE ORDER of the Pollution Control Board:

1. Paragraph 1(b) of Board Order of October 14, 1971 in Case #71-309 is deleted as moot;
2. Variance granted Chicago-Dubuque Foundry Corporation on October 14, 1971 in Case #71-309 extended by our May 10, 1972 Order to July 12, 1972 is extended to September 12, 1972, subject to all terms and conditions of our October 14, 1971 Order, as modified by this Order.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 10th day of October, A. D. 1972, by a vote of 5 to 6.

Christan J. Moffett