

ILLINOIS POLLUTION CONTROL BOARD  
December 21, 1971

AGRICO CHEMICALS CO. )  
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 v. ) # 71-211  
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 ENVIRONMENTAL PROTECTION AGENCY )

Frederick C. Hopper for the Environmental Protection Agency  
Brainerd W. LaTourette, Jr. for Agrico Chemicals Co.

Opinion of the Board (by Mr. Currie):

Agrico manufactures fertilizer in East St. Louis. Its Air Contaminant Emission Reduction Program (ACERP), approved by the Air Pollution Control Board, committed the company to curing its particulate problems by the fall of 1970. Letter of Plant Manager Matthiesen to C. W. Klassen, Dec. 18, 1969. It is now nearly 1972, and the company asks for more time. It plans to install a scrubber and a baghouse, both of which the Agency tells us will do the job, by July of 1972.

We have no great difficulty in agreeing that the nuisance does not seem so severe as to justify a plant shutdown while the installation takes place, with its attendant hardships to employees and to the community as well as to the company. In that sense we are prepared to grant a partial variance. But we cannot give the company immunity from money penalties for its delay. It was the company that promised it would be in compliance by fall 1970, and it has offered no satisfactory justification for missing its own deadline by over a year and a half. Our variance therefore must be conditioned upon the payment of \$10,000 as a penalty, in order that the statutory policy of prompt compliance not be undermined.

Our alternative would be to deny the variance altogether on the ground the hardship to the company is self-inflicted, and to leave Agrico open to a possible complaint, with the likelihood of a similar result. As in prior cases, however, we believe the public interest is better served by resolving the entire matter in a single proceeding, approving the new program on condition of a penalty for failure to comply with the old one. The penalty is necessary if similar delays are to be deterred in future cases and if the company is not to profit by its own wrong. The amount is if anything rather small as compared with the length of the delay and the large size of this nationwide corporation. Cf. Marquette Cement Co. v. EPA, # 71-23 (Jan. 6, 1971); GAF Corp. v. EPA, # 71-11 (April 19, 1971).

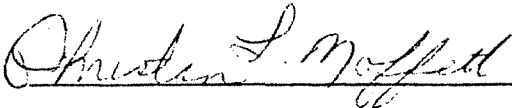
This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

Agrico Chemicals Co. is hereby granted a variance to emit particulate air contaminants from facilities at its East St. Louis plant covered by the program in this case in excess of the Rules and Regulations Governing the Control of Air Pollution until July 1, 1972, but only if the following conditions are met.

1. Agrico shall diligently pursue its program of scrubber and baghouse installation as described in the record; and
2. Agrico shall, within 35 days after receipt of this order, post with the Environmental Protection Agency a bond or other adequate security in the amount of \$100,000 to assure timely and satisfactory completion of the above program; and
3. Agrico shall, within 35 days after receipt of this order, pay to the Agency a penalty in the amount of \$10,000 for its delays in implementing its control program; and
4. Agrico shall file progress reports with the Agency by March 1 and July 15, 1972.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 21st day of December, 1971 by a vote of 4-0.

  
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