

ILLINOIS POLLUTION CONTROL BOARD
December 27, 1971

MERLAN, INC.)
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 v.) # 71-292
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

Our order of September 16, 1971 (Employees of Holmes Bros. v. Merlan, Inc., # 71-39) required Merlan to lower its grizzly (a device used in the processing of recycled iron) and enclose its conveyor system by October 15, 1971, and to install a cyclone collector by January 15, 1972, all in order to control fugitive dust and related emissions. On September 30 the company filed a variance petition asking that six months from that date (to March 30, 1972) be allowed to complete these improvements. Delays due to the Agency's alleged unwillingness to act on a permit application before the September 16 decision and the economic undesirability of taking the several remedial steps at different times are given as reasons.

The Agency did not respond to the petition until today, although eighty-nine days have now passed since its filing. We must act now or the petition will be granted by default, since the statute requires a decision within 90 days. We have no time to ask for the company's response to the suggestions made in the recommendation. We can only say that on its face the request looks reasonable, that the requested time is now half gone, that the Agency agrees the reasons for some delay are legitimate, and that the magnitude of the pollution problem (as described in our earlier hearing record) is not so great as to justify closing the plant while the improvements are made. The Agency has not told us any facts to justify the somewhat earlier (February 15 and March 1) dates it suggests, and we therefore will allow the time the company requested.

One condition of our earlier order was the submission, within 45 days, of a report on possible means of controlling emissions from material storage and unloading. Such a report was received November 1. Our order also required the Agency to file a response to the report within 15 days, but no such report was received. The EPA recommendation, without explanation, asks that we require covering of storage piles by June, 1972,

and allow until January 15 for filing of a plan for controlling emissions from unloading. We think Merlan should have another opportunity to respond to these suggestions, and we think it is entitled to the Agency's comments on its own report first. We therefore will require submission of a further report on both unloading and storage within 20 days after receipt of the Agency's reply, and further proceedings will be held as required.

ORDER

The October 15, 1971 and January 15, 1972 dates for compliance with paragraphs 2(a) and 2(b) of the Board's order of September 16 (#71-39) are hereby extended to March 30, 1972, on the following conditions:

- (1) Merlan shall within 35 days after receipt of this order post with the Agency a bond or other adequate security in the amount of \$20,000 to assure compliance with its control program; and
- (2) Within 20 days after receipt of the Agency response specified in paragraph 4 of the September 16 order, Merlan shall file with the Board and with the Agency a further report relative to control of emissions during unloading and storage of material; and
- (3) Merlan shall file with the Board and with the Agency a status report on or before April 15, 1972; and
- (4) Merlan shall comply with the provisions of the September 16 order except as specifically modified herein.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 27th day of December, 1971 by a vote of 4-0.

