ILLINOIS POLLUTION CONTROL BOARD
April 17, 1973

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#72-468
v.	)	
	)	
ELIZABETH STREET FOUNDRY, INC.	)	

DENNIS R. FIELDS, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF ENVIRONMENTAL PROTECTION AGENCY
RICHARD J. TROY OF GEOCARIS, SNIEDER & TROY APPEARED ON BEHALF OF RESPONDENT

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

Complaint was filed against Elizabeth Street Foundry, Inc., operator of an iron and steel melting facility located in Chicago, alleging that during the period beginning on or before August 25, 1971 and continuing to the date of the filing of the complaint, Respondent operated its facility so as to cause emissions of particulate matter, in violation of Rule 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution and, accordingly, violated Section 9(a) of the Environmental Protection Act.

An answer was filed by Respondent denying violation of the Rule and alleging that it had instituted procedures so as to bring its operation into compliance, and further alleging that the relevant Regulations discriminated against small foundries because of the relatively short period of time each week that the operation was conducted. The answer also denies that the Respondent operates a steel melting facility but admits that it operates an iron melting facility.

Hearing was held on the complaint and answer. A motion to re-open proofs to offer additional evidence with respect to possible rezoning of the subject and adjacent properties was denied. The foundry operated by Respondent has been in existence since 1889. The cupola in which the scrap and iron are melted is uncontrolled so far as any installation of particulate emission abatement equipment is concerned. 35 people are employed on a five-day week. The cupola is at least 23 years old and perhaps older, the evidence being unclear on this particular point. It is rated at 6 tons.

The Agency's proof of violation of the relevant particulate emission regulations was based on Table 7-10 from AP-42 "Compilation of Air Pollutant Emission Factors", Environmental Protection Agency Exhibit 2.

We have previously held that proof of violation may be based on standard emission factors (See Environmental Protection Agency v. Lindgren Foundry Co., #70-1, 1 PCB 11 (September 25, 1970)) although such evidence is subject to rebuttal by Respondent upon proper showing of inapplicability of such standard emission factors. (See Norfolk & Western Railway v. Environmental Protection Agency, #70-41, 1 PCB 281, (March 3, 1971)).

The process rate for the foundry based on information submitted by its manager was determined to be 4.54 tons per hour or 9,080 pounds per hour. The metal charge rate was 4 tons per hour (R.11) On the basis of standard emissions of 17 pounds per ton of metal charge from the foregoing table, an emission rate was determined by the Agency to be 68 pounds per hour. Allowable emissions from the cupola under Rule 2-2.54 are 15.6 pounds per hour. On this basis, a violation is fully demonstrated.

In rebuttal, the Respondent submitted evidence that the computed emissions were inaccurate because of the sand-blasting of the scrap steel employed by Respondent which removed scales, dirt and oily matter from the scrap, the screening of the limestone to remove fines and the use of hard coke and hand loading to decrease breakage and resulting emissions (R. 156). It is Respondent's contention that the foregoing procedures are unique to its operation and are not reflected in the emission factors above referred to. Respondent therefore asserts that the 17 pounds per hour factor used is not representative of Respondent's operation. Respondent also makes two further contentions that must be considered. It asserts that the Regulations do not properly give consideration to small operators who do not conduct their operations on a continuous basis and postulates from this that large operations could comply with the Regulations, and at the same time, emit an inordinate amount of particulates into the atmosphere, whereas the small operator operating only a few days a week, who exceeds the allowable limits, would be in violation of the Regulations while emitting a relatively small amount of pollutants into the atmosphere.

We do not find this contention lacking in merit but nonetheless are confronted with the need for a regulatory scheme that will be applicable to all industries of the same nature for which measurement and computation can best be controlled on an hourly emission rate basis. See In the Matter of Emission Standards, #71-23 (April 13, 1972). Since the hourly emission rate computation is the most appropriate for determining violations or compliance for industries of this nature, we must resort to this method even though, in its application to specific operations, it may appear to be unduly restrictive. Certainly, consideration to this contention will be given in the matter of assessment of any penalties or other action taken by the Board.

The second assertion made by Respondent is that because of likely changes in zoning classification, it is in danger of becoming a nonconforming use. Here again, we do not minimize this problem. We recog-

nize that lenders are not eager to advance mortgage funds for uses that may only have a limited period of legal existence and that abatement provisions in zoning ordinances limit the legal life of entities that are non-conforming. However, we have previously held that the likelihood of acquisition by eminent domain proceedings does not serve as a justification for continued pollutional discharges. See Environmental Protection Agency v. Litton Power Transmission Division, a division of Litton Systems, Inc., a Delaware corporation, a wholly owned subsidiary of Litton Industries, Inc., a Delaware corporation, #72-147 (March 8, 1973). By the same token, we cannot grant exemption from the regulatory scheme to entities that are, or may be, non-conforming under the relevant zoning ordinances. Indeed, the upgrading of the zoning might, by its very nature, suggest the need for greater compliance than for less.

The Respondent has also introduced into evidence financial data both with respect to the cost of compliance consequential to the installation of scrubber and baghouse installations, and a summary of its own financial position, demonstrating a deficit condition for fiscal 1971. Respondent's banker has stated that it would not loan $100,000 for pollution abatement equipment, but might consider a loan on a more moderate scale (Respondent's Exhibit 6).

The foregoing facts present a situation that is difficult for the Board to resolve. We do not believe that Respondent's evidence with respect to sand blasting, use of hard coke and hand loading, are sufficient to rebut the Agency's case demonstrating violation of particulate regulations based on standard emission factors. On the other hand, Respondent has demonstrated that it is employing procedures not employed in other foundries, that could have a substantial lessening of particulate emissions. The trouble is that we do not know how much is being achieved and in view of the absence of any abatement equipment of any nature, we are justified in assuming that the unabated emissions continue, in violation of the Regulations. What is needed is a definitive test to determine exactly what is going into the air and believe that a company that has been in existence for 84 years should take the necessary steps to ascertain precisely what its emission measurements are. The record does not indicate that Respondent has created any air pollution nuisance in the neighborhood and none has been charged.

In consideration of Respondent's financial plight, the possibility of it being classified as a non-conforming use under the zoning ordinance and its apparent good faith in employing housekeeping procedures with a view of minimizing its pollutional discharges, no penalty will be imposed. However, we believe that Respondent must be directed to cease and desist the violation of the Regulation. The difficulty is that without a stack test no one knows the extent of the emission or the amount of abatement equipment that must be installed to achieve compliance. We cannot sanction continuing violation. It will be incumbent upon the Respondent to make a determination of what its emissions are and what is needed to reduce them to a level consistent

with the applicable regulations. In the event inordinant expenditures appear necessary, the Board would be receptive to consideration of a variance petition. However, on this stage of the record, neither the degree of emissions nor the cost of control are known. It may be that with the procedures being employed by Respondent, expensive emission equipment need not be installed. This Respondent must so ascertain. It will be our Order that within 60 days from the date hereof Respondent cease and desist its pollutional discharge so as to violate Rule 2-2.54 and shall report to the Agency on or before said date, the nature and extent of its pollutional discharge, and its program for compliance.

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

IT IS THE ORDER of the Pollution Control Board that:

> On or before June 17, 1973, Respondent shall cease and desist its pollutional discharge from its foundry operation so as to violate the relevant Regulations and statutory provisions with respect to air pollution. Prior to said date, Respondent shall submit a program of compliance on the basis of tests conducted by it demonstrating the extent of its pollutional discharge and the equipment it proposes to install to achieve compliance.On or before June 17, 1973, the parties shall conduct such testing as is necessary to ascertain that Respondent is in compliance with all relevant regulations with respect to the Rules and Regulations Governing the Control of Air Pollution.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 17th day of April, 1973, by a vote of 3 to 0.

Christan L. Moffett