

ILLINOIS POLLUTION CONTROL BOARD
October 3, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-126
 v.)
)
 KANKAKEE FOUNDRY COMPANY)

MR. PRESCOTT E. BLOOM, SPECIAL ASSISTANT ATTORNEY GENERAL,
APPEARED ON BEHALF OF COMPLAINANT
MESSRS. EDWIN W. SALE AND WILLIAM E. EAKEN, APPEARED ON BEHALF
OF RESPONDENT

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

Complaint was filed against Kankakee Foundry Company, Respondent, on March 29, 1972, alleging that Respondent's foundry operation between July 1, 1970 and May 3, 1972, (the date on which Respondent received a variance for the operation of its foundry in Case #71-366) discharged particulates and other contaminants into the atmosphere causing air pollution, in violation of Section 9(a) of the Environmental Protection Act and Rule 2-2.54 of the Rules and Regulations Governing the Control of Air Pollution. The variance order was granted without prejudice to any penalties which might be asserted in the pending enforcement suit. The order permitted Respondent to exceed the limitations set forth in the Act and Rules until September 1, 1972, in contemplation of the operation of the cupola then in existence being terminated on July 1, 1972 and the installation of a new cupola equipped with emission control devices or a coreless induction furnace, either of which would bring Respondent into compliance by the termination of the variance.

The present proceeding is for violations occurring between July 1, 1970, the effective date of the Environmental Protection Act and May 3, 1972 when the variance was granted. Hearing was held on the complaint on August 21, 1972. On the basis of the record, we find that Respondent has violated the Act and Regulations as alleged and assess a penalty of \$3,000. The record in the variance case has been incorporated into the present proceeding. We reject Respondent's contention that the mere filing of a variance petition before its allowance serves as a shield against the imposition of penalties relating to the period prior to the actual grant of variance. Since the Board's Order is dated May 3, 1972, emissions prior to that date are unprotected notwithstanding the ultimate variance grant.

The facility subject to this proceeding was a #9 Whiting Cupola approximately 45 years old employing emission controls consisting of a wet cap on the cupola, together with afterburners. Estimates made by both the Respondent and the Agency in the variance proceeding indicate that emissions from this cupola violated the particulate regulations although there was substantial difference between the estimates of the parties as to the amount of emissions resulting; the petitioner estimating particulate emissions at a rate of 72 pounds per hour and the Agency estimating emissions at the rate of 424 pounds per hour. Allowable emissions are 23.4 pounds per hour (R.37).

Agency evidence in the present case adopts the emission rate at 72 pounds per hour (R.36). Consequently, by any measurement it is undisputed that during the period involved, Respondent's operations exceeded the allowable limits. It is also undisputed that Respondent's awareness of its violations date back to 1969 (Environmental Protection Agency Ex. 8) and no definitive program appears to have been pursued prior to the variance program sought in late 1971.

Robert H. St. John appeared as a witness for the Agency (R.57) and testified that smoke emissions from the foundry since July of 1970 discolored his home and that the smoke emissions of the foundry were personally observed by him.

While the evidence in the enforcement proceeding was somewhat meager, the incorporation in the record of the variance proceeding enables us to sustain a finding of violation of both the particulate regulations and the air pollution, as alleged. While we can assume that Respondent is presently in compliance, the long delay in achieving it dictates the imposition of a penalty which we impose in the amount of \$3,000. In Environmental Protection Agency v. Chicago-Dubuque Foundry Corporation, #71-331, 3 PCB 377, January 6, 1972 a penalty was entered against the company for particulate emission violations occurring prior to the time a variance was granted. We follow the same practice in the present case. Neither the filing for a variance or its ultimate allowance, precludes imposition of penalties for the period in which the violation occurred.

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

IT IS THE ORDER of the Pollution Control Board that penalty in the amount of \$3,000 is assessed for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency,

2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 23rd day of October, 1972, by a vote of 5 to 0.

Christan F. Moffett