

ILLINOIS POLLUTION CONTROL BOARD  
November 14, 1972

JOHNS-MANVILLE PRODUCTS CORPORATION )  
(WAUKEGAN PLANT) )  
 )  
 ) #72-444  
v. )  
 )  
ENVIRONMENTAL PROTECTION AGENCY )

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

On September 26, 1972, in case Johns-Manville Products Corporation (Waukegan Plant) v. Environmental Protection Agency, #72-272, 5 PCB, we entered an Opinion and Order granting a variance program to Johns-Manville Products Corporation enabling the installation of abatement equipment to control asbestos emissions from various emission sources located in its Waukegan plant. Paragraph 3 of our Order provided as follows:

"Where compliance is to be achieved by the installation of air pollution control equipment, within 30 days of the completed installation of such equipment, Petitioner shall submit to the Agency for its approval results of stack tests performed on such equipment. Testing shall be done in accordance with Rule 651 by an independent testing organization acceptable to the Agency, and the Agency shall be notified 7 days in advance of testing so that Agency personnel may witness the tests."

We have received a communication from Johns-Manville Products Corporation stating in part as follows:

"The purpose of this letter is to enter a request for your consideration of an amendment to Condition 3; specifically that portion which stipulates 'testing shall be done in accordance with Rule 651 by an independent testing organization.' We propose, instead, that these tests of new control facilities be conducted by thoroughly qualified personnel within our Industrial Hygiene Laboratory at Waukegan and that all aspects of the testing work be totally open to field observation and check by inspectors and technicians of your Agency. The reasons for this request are as follows:

Accurate fiber counts are not commonly obtained by conventional stack testing techniques that have been designed to yield particulate concentrations and bulk particulate emission rate data. We have perfected an alternate test method which

makes use of personal air sampling devices which are mounted on the clean-air side of fabric filter control equipment. The samples then are examined according to standard microscopic procedures to determine the amount and size of fibers present.

Based upon our experience in this specific type of testing work, we offer this service to others in our industry on a national scale. Our Industrial Hygiene Laboratory Technicians in the Corporate Laboratory at Waukegan are well qualified to perform this type of testing and analysis. We have routinely used and evaluated this method of analyzing fabric filter emission conditions for a period of approximately four years at our many asbestos using locations. Presently we are submitting formal reports of test data to your agency for your assessment regarding existing emission points.

We believe that it is preferable to have the fiber counting work performed as near to the sampling site as practical to avoid any risk of errors that might result due to handling of the collected samples during transport. The use of our laboratory would eliminate the possibility of such a risk.

We are confident that the objective of unbiased test data can be achieved through the surveillance of our sampling and counting procedure by your Agency."

Rather than consider this as a request for modification of our original Order, we have docketed the request as a variance petition. Our reason for proceeding by this method is to comply with the Statute and Regulations enabling Agency response, public comment and hearing, if necessary. What petitioner is seeking is, in fact, a variance of our original Order and the proceedings should be so characterized. As we said in *Chicago-Dubuque Foundry Corp. v. Environmental Protection Agency*, #71-309, 5 PCB , (July 18, 1972), where a stipulation was submitted to enable extension of a previously granted variance:

..."[R]eflection persuades us that such a procedure is not consistent with the careful procedural requirements set up by the Environmental Protection Act for purposes of encouraging citizen participation. We express no doubts as to the good faith of either the company or the Agency in attempting to avoid unnecessary complexity in passing upon what appears to be a routine request, but we think it important that the statutory procedures be followed. The requests before us are neither more nor less than petitions for additional variances. When such a petition is filed, the statute requires certain public notices to be given and the opportunity for public comment afforded. A new number should be assigned to the requests for extension and modification, the proper notices given and our action postponed pending

possible public comment in the 21-day period provided for by statute. Cf. Marquette Cement Mfg. Co. v. EPA, #71-296 (Dec. 21, 1971); John T. LaForge Co. v. EPA, #71-286 (Dec. 21, 1971)."

The Agency is directed to give public notice as required by law and file its recommendation within 21 days from the date of this Order, upon receipt of which the Board will enter such further Order as is appropriate.

IT IS SO ORDERED.

Mr. Henss and Mr. Dumelle dissented believing the variance procedure unnecessary.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 14<sup>th</sup> day of November, A. D. 1972, by a vote of 3 to 2.

Christan S. Moffett

