

exceed maximum emission limits presently in force and effect in the Rules and Regulations Governing the Control of Air Pollution.

3. U. S. Industrial Chemicals Company, through an independent recognized consultant, shall establish, operate and maintain continuous monitoring stations for SO₂ for the period from April 1, 1972 to September 1, 1972, in the area where crop damage has occurred in the past. Within 30 days after September 1, 1972, the company shall file with the Board and Agency a program for the alleviation of excess SO₂ levels sufficient to cause plant damage. The Board shall issue a further order as required.
4. The Company shall, within thirty-five days after receipt of this Order, post with the Agency a bond or other security in the amount of \$500,000.00, in a form satisfactory to the Agency, which sum shall be forfeited to the State of Illinois in the event that the conditions of this order are not complied with or the facilities in question are operated after expiration of these variances in violation of regulation limits."

On December 27, 1971, pursuant to motion of petitioner for Stay of Order pending review of the October 14, 1971 order, asserting that petitioner and the Environmental Protection Agency had been unable to agree on the form of bond, we entered the following Order:

"We stay our Order of October 14, 1971 as to the bond, to January 17, 1972, and direct the petitioner and the Agency, respectively, prior to said date, to submit to the Board the form of bond proposed by each party. After receipt of the proposed bond forms, we shall issue a further Order directing the form of bond to be posted, and such further order as to stay as shall be appropriate in the circumstances. In all other respects, the motion for stay of our October 14, 1971 order is denied so that petitioner may proceed with its program of compliance as contemplated by our order."

On January 10, 1972, petitioner moved for amendment of the original variance order. On January 25, 1972, the Board, in response to that motion, entered the following Order:

- "1. That petitioner's motion for amendment of paragraph 1 of the Order entered on October 14, 1971 be granted by the addition of the words "or the two boilers on which these precipitators are to be installed shall not be operated after May 30, 1972 so that emissions from these two boilers exceed maximum emission limits presently in

force and effect in the Rules and Regulations Governing The Control of Air Pollution", following the words "two additional precipitators shall be installed and in operation by May 30, 1972" presently in said order. In all other respects, the motion is denied.

2. Variation heretofore granted as amended shall not be effective until bond in the amount of \$500,000.00 has been approved by the Board. Petitioner is directed to comply with the Board's Order of December 27, 1971 in this respect."

Petitioner has neither complied with the order of December 27, 1971 nor with the order of January 25, 1972. The Agency has responded with its proposed form of bond. In view of the company's failure to comply with our order, this Board must assume that, as the Agency states, the major point of contention between the Agency and the company is over whether a surety should be required as part of the bond. (See letter dated November 30, 1971 to James F. Lemna, Attorney for U. S. Industrial Chemicals Company from Fred Prillaman of the Agency, said letter attached to the Agency's proposed bond form). We find no reason why a surety should not be provided. Such has been the procedure followed in many cases.

IT IS HEREBY ORDERED that variance as heretofore granted in the Board's order of October 14, 1971, as amended on January 25, 1972, shall not be effective until bond in the amount of \$500,000.00 has been posted with the Agency according to the form attached hereto.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Supplemental Opinion and Order of the Board was adopted on the 3 day of February, 1972, by a vote of 3-0.

Christan L. Moffett

ILLINOIS POLLUTION CONTROL BOARD

U. S. INDUSTRIAL CHEMICALS COMPANY,))
a Division of National Distillers))
and Chemical Corporation,))
))
v.))
))
ENVIRONMENTAL PROTECTION AGENCY))

PCB 71-44

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS THAT WE, U. S. Industrial Chemicals Company (the "Company"), and (the "Surety"), are hereby held and firmly bound to the Environmental Protection Agency of the State of Illinois (the "Agency") in the sum of \$500,000.00, for the payment of which we bind ourselves and our successors and assigns.

The condition of this obligation is such that:

WHEREAS, an Order and accompanying Opinion has heretofore been entered in the above-entitled case (the "Order") by the Illinois Pollution Control Board (the "Board") granting the Company a variance to emit particulate matter, gases and other contaminants from sources described in the Order beyond the limitations prescribed in applicable rules and regulations and beyond the proscriptions of Section 9(a) of the Environmental Protection Act pending installation of certain control devices and facilities, which Order is by reference incorporated therein; and

WHEREAS, said Order was conditioned, among other things, upon the posting with the Agency by the Company of a bond in the amount of \$500,000.00, which amount shall be forfeited to the State of Illinois in the event that the Company shall fail to comply with any of the conditions of the Order or any of the conditions of this bond.

NOW, if the Company, its successors and assigns, shall:

1. Cease operation of the sulphuric acid plant by March 30, 1972;

AND

Install and have in operation by May 30, 1972, two additional electrostatic precipitators on its coal-fired boilers; or so operate said two boilers after May 30, 1972 so that emissions from said two boilers shall not exceed the allowable limits of the Rules and Regulations Governing the Control of Air Pollution.

2. Comply with all further conditions of the Order within the dates specified in the Order; and

3. Show this obligation as a liability in all of its corporate financial statements prepared for shareholders and in all of its corporate reports to regulatory agencies published hereafter; then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED THAT failure of the Company to comply with any term of this bond shall not result in any forfeiture if occasioned by Act of God or the public enemy, accidental fire or explosion, flood, war, riot, sabotage, accident, government priority or other action by any state or federal governmental authority or local governmental agency other than relating to pollution control, strike, slowdown, lockout, or work stoppage or labor trouble of any kind whatsoever, failure of supply of materials, parts, or equipment, or failure, delay, or refusal of any designer, fabricator, or supplier to design, fabricate, deliver or install as agreed any equipment specified herein, provided such failure, delay, or refusal is not due in whole or in part to fault of the company, or if occasioned by any other circumstance, whether of like character or different character from those enumerated above, which circumstance is beyond the reasonable control of the Company.

The Board shall be the determiner of any disputed facts arising hereunder, including but not limited to any issue of forfeiture which may arise. Should the Agency decide that grounds exist for a forfeiture of this obligation, the Agency shall notify the Company and the Surety by Certified Mail to the addresses listed below, whereupon the Company shall, within seven days after receipt of said notice, pay to the State of Illinois through the Agency, the amount of \$500,000.00; provided, however, that if the Company disputes any alleged forfeiture hereunder by filing, within seven days after receipt of said notice, a Petition for relief with the Board, any amounts to be paid hereunder shall not be due and payable until resolution of all issues of forfeiture by the Board; and provided further that no such legal proceeding may be brought by the Agency unless initiated within six months from the time of discovery of the grounds giving rise to such claimed forfeiture. Provisions of the Environmental Protection Act and Procedural Regulations of the Board regarding the conduct of proceedings before it shall govern the conduct of the disputed forfeiture hearing. Any determination by the Board pursuant to this instrument is subject to the right of review thereof as provided by law.

Notice to the Agency shall be to: