

ILLINOIS POLLUTION CONTROL BOARD

August 5, 1971

Environmental Protection Agency)
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State Line Foundries, Inc.)

David C. Landgraf, Attorney for Environmental Protection Agency
Eugene Brassfield, Attorney for State Line Foundries, Inc.

Opinion of the Board (by Mr. Kissel):

On April 23, 1971 the Environmental Protection Agency (the "Agency") filed a complaint with the Board against State Line Foundries, Inc. ("State Line") in which it alleged that State Line was operating a job shop gray iron foundry two miles north of Roscoe, Illinois, since July, 1969 in violation of the Environmental Protection Act (Section 1003(b)), the Air Pollution Control Act (Sections 240.2(a), 240.2(c), and 240.3) and the Rules and Regulations Governing the Control of Air Pollution (Rule 3-3.000, 3-3.111 and Table I of Chapter III). The Agency asked that a cease and desist order be entered against State Line, that State Line be required to make application for a permit with the Agency, that State Line be closed if the permit was not granted, and that penalties be assessed against State Line for the above described violations. On May 4, 1971 State Line filed a petition for variance with the Board in which State Line asked for a period of time up to and until December 31, 1971, in order to install a new electric induction furnace during which time it would continue to violate the applicable standards. This petition for variance was consolidated with the complaint filed by the Agency.

On May 25, 1971 State Line applied for a permit from the Agency to construct and install the electric induction furnace.

The permit was issued on June 14, 1971 which contained, inter alia, the following condition:

"Condition (8): That only pig iron and clean casting returns are charged to the furnace. No contaminated scrap or the addition of magnesium for manufacturing ductile iron should be charged to the furnace."

On June 24, 1971 State Line filed a petition contesting "Condition (8)". This petition was consolidated with the other actions.

" . . . on the grounds that an electric induction furnace was capable of manufacturing ductile iron and capable of charging clean scrap iron without violating the Act of the Rules and Regulations."

On June 10, 1971 a prehearing conference was held before Clyde O. Bowles, Jr., hearing officer. As a result of that discussion and others the parties have proposed a settlement agreement to the Board. The document was filed on July 20, 1971 and it details the past history of operation by State Line and recommends granting of the variance to State Line and recommends an amendment to Condition (8) of the permit. There is, however, a difference of opinion between the parties as to whether a penalty should be assessed against State Line. The matter of the assessment of penalties is left to the Board. Each party submitted a written position on that matter.

State Line operates a gray iron foundry near Roscoe, Illinois. It began operation in May of 1968 and now has 16 to 17 full time employees. The foundry is located in an open area with only three residences located within one half mile of the plant. In the foundry there is a 42" cupola lined down to 30". The cupola is operated on the average of one hour per day with a charge rate of three-ton/hour without any air pollution control equipment whatsoever. The particulate emissions from a gray iron cupola of this capacity are 43.35 pounds/hour and about 344.25 pounds/hour of carbon monoxide gas. From the stipulation which was signed by both parties, it appears that the other areas of the plant, i.e., shake out area, grinding operations, etc., are sufficiently controlled so as not to violate any existing rules and regulations. The principal problem is the cupola.

Before discussing the matter of penalties, the Board must first decide whether to accept the settlement proposed by the parties. Essentially, if the settlement is accepted, State Line will be allowed to operate, as it has in the past few years, without any control devices on its cupola. This will mean that excessive particulate emissions will continue for this period, until December 31, 1971, when the installation of the new electric induction furnace will be complete. In matters such as these - variance cases - the Board can grant variances if compliance with the law will impose an "arbitrary or unreasonable hardship." We have said on many occasions that in determining whether such a hardship is imposed the Board will employ a balancing process, that is, the harm done to the community if the variance is granted versus the loss to the community and the petitioner if the variance is not granted. We weigh the test strongly in favor of the community at large. In this particular case there will be a significant loss to State Line if the variance is not granted; that is, although the settlement agreement does not specifically say it, State Line will be close to bankruptcy. In addition, there will be a financial loss to the community which is outlined in Exhibit A which was attached to a "Statement of Fact" filed by State Line. The estimated financial loss to the community would be about \$341,000. While all of the money detailed in that Exhibit would not really be lost (for example, real estate taxes on the land would still be paid, or the property would be taken over) still a significant financial loss would occur if State Line were to shut down. Even though there would be such a financial loss, we feel that this case would be one in which we would deny the variance and enter a cease and desist order against State Line except for the fact that the operation of the State Line Foundry has not produced any noticeable effect on the neighbors. Here is a case where State Line completely disregarded state regulations in that it did not file a letter of intent and it did not file for a permit. State Line tells the Board that this was because it did not know that the regulations existed, but even State Line admits that "ignorance of the law is no defense." This inaction by State Line would, therefore, be enough for us to close them down, except it is apparent from the record that the neighbors have no objection to the granting of the variance for these next few months until State Line can put in the control equipment.

We therefore feel that the variance should be granted.

The inaction of State Line in failing to follow the basic fundamentals of the State law on air pollution cannot go unnoticed. For if we allowed State Line to walk away from this case without a penalty being imposed, it could seriously impair the credibility of the entire pollution control program in Illinois. It would indeed, in effect, be penalizing those who did comply with the law and filed applications for permits, thereby having to put control on their equipment at a much earlier date. If those who don't obey the law are not penalized, those who do obey it have a right to ask why not. State Line's failures in this case are indeed serious ones and, therefore, this Board shall assess a penalty of \$7,500 for State Line's failure to file for a permit and for its admitted emission, since May of 1968, of substantially more particulates than are allowed under the regulations. Indeed, the penalty would be much greater in amount if State Line were not so heavily committed financially now.

This opinion shall constitute the findings of fact and conclusions of law of the Board.

Mr. Dumelle has filed a dissenting opinion.

O R D E R

Upon consideration of the record and the stipulation signed by both parties on July 9, 1971, the Board enters the following order:

1. The Board hereby approves the compliance schedule agreed to by both parties as set forth in the document entitled "Stipulation to Resolve All Matters, with Exception of Issue of Penalty, Pertaining to the Above Consolidated Matters", dated July 9, 1971, which document is incorporated into the order herein. Based upon the compliance schedule outlined in that document, State Line will install by December 31, 1971 an electric induction furnace in place of the present furnace. Until December 31, 1971, State Line will be allowed to continue to operate its business in a normal and customary manner, but shall not be allowed to increase the amount of production over and above what was normal and customary before this settlement and compliance schedule were approved. In addition, State Line shall apply for an operating permit for the new furnace, and shall not use the old furnace after December 31, 1971.

2. As set forth in the herein above referred to document, Condition (8) of the issued permit for the installation of the electric induction furnace shall be modified as provided in the document.

3. State Line shall permit the Agency, or its duly constituted agents or representatives, the right to enter upon its premises at reasonable times during business hours to inspect the facilities owned by, or under the control of, State Line for the purpose of determining whether State Line is complying with the applicable statutory and regulatory standards.

4. State Line shall pay a penalty in the amount of \$7,500 for violation of the Acts and the Rules and Regulations promulgated thereunder, as described in the document hereinbefore referred to, and in this opinion.

5. State Line shall post with the Environmental Protection Agency on or before August 15, 1971, a personal bond in the amount of \$50,000, which sum shall be forfeited to the State of Illinois in the event that the State Line plant is operated after December 31, 1971 in violation of the relevant statutory and regulatory provisions relating to the control of air pollution.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 5th day of August, 1971.


