

ILLINOIS POLLUTION CONTROL BOARD  
March 22, 1971

C.W. SHUMWAY & SONS )  
 )  
 v. ) PCB #71-45  
 )  
 ENVIRONMENTAL PROTECTION AGENCY)

Opinion and Order of the Board (by Mr. Currie):

Shumway asks a variance allowing emissions in excess of the particulate regulations from a small foundry cupola in Batavia. The petition is insufficient and is hereby dismissed.

Procedural Rule 401 spells out in some detail what a petition must contain, including a statement of the degree of harm to the community if the variance is granted. There is no such statement in the petition. It should be added that a mere conclusion that the emissions will not be harmful will not suffice; the facts on which such a conclusion is based must be alleged. City of Jacksonville v. EPA, #70-30 (Jan. 27, 1971). We cannot say that the emission of 30 pounds per hour of particulates is harmless when the regulation prescribes a much smaller emission.

It is alleged that nine months are required for the installation of control equipment, and that the company and its employees would suffer hardship if forced to shut down in the meantime. If the regulation in question were brand new, we might well find this timetable reasonable. But there is no allegation as to why this improvement was not made four years ago, when the regulation was adopted. The regulation allowed a grace period during which existing sources could be brought into compliance without closing down. People who did not take advantage of the grace period are in no position to complain that a later shutdown causes them hardship. The hardship is such a case is self-inflicted and is no excuse for non-compliance. See Decatur Sanitary District v. EPA, #71-37 (March 22, 1971). To allow an unexplained delay to justify a variance would deprive the deadlines set in the regulations of any force and pull the teeth from the pollution control program.

It follows that even if the allegations in the petition were proved no variance could be granted. Therefore no hearing will be held, and the petition is dismissed. PCB Regs., ch. 1, Rules 401, 405 (b) (1). A new petition meeting the requirements of the rules may be filed.

This opinion constitutes the Board's findings of fact, conclusions of law, and order.

I, Regina E. Ryan, do hereby certify that the above Opinion and Order were approved this 22nd day of March, 1971.

REGINA E. RYAN, CLERK OF THE BOARD