

ILLINOIS POLLUTION CONTROL BOARD

June 9, 1971

ELECTRIC WHEEL CO. )  
 )  
 v. ) PCB # 71-55  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

Opinion of the Board (by Mr. Currie):

Electric Wheel operates an iron foundry in Quincy whose particulate emissions exceed those allowed by the Rules and Regulations Governing the Control of Air Pollution. The company's program for bringing its emissions into compliance (ACERP) was approved by the Air Pollution Control Board in 1969, with a compliance date of April, 1972.

The company petitions for approval of a modification of this program, saying it now expects compliance by December 31, 1971. Because it seemed unlikely we would find a need to shut the company down this close to the end of a three-year program approved by our predecessors and pursued with more than good faith, we did not schedule a hearing, believing the case could easily be resolved on the basis of the Agency's recommendation.

But the Agency made no recommendation on the merits; it requested us to hold a hearing, on the ground the petition did not allege facts sufficient to enable us to make an informed decision. Had we received this request in reasonable time, we should of course have held a hearing. The Agency is entitled to put its case, and to put the petitioner to its proof. But the petition was filed on March 19 and the Agency's motion was not filed until May 24 -- two months later and less than thirty days before the date on which, under the 90-day statutory limit, the Board must decide the case. By the time we were asked to hold a hearing it was practically impossible for us to do so. And we are left with no guidance yet from the Agency as to how the case should be decided.

The statute requires the Agency to file its recommendations "promptly" (Section 37), and we urge that it do so in the future. Not only is this necessary if the Board is to act upon a full record within the statutory period, which is difficult enough at best. Both the petitioner and the public have a right to expect a prompt decision; any unnecessary delay can only serve to defer the correction of pollution and to discredit the control program.

In the absence of a hearing, and on the basis of the only information before us, we think the petitioner has established that the revised program is a decided improvement on the one approved in 1969. While an ACERP must, like any other variance, be renewed annually on a showing of adequate progress (section 36 (b)), and while we have authority to reexamine, when asked to renew an ACERP, the entire question whether the hardships of immediate compliance

(i.e., shutting down) seriously outweigh the benefits (see EPA v. Commonwealth Edison Co., # 70-4, February 17, 1971), we will not automatically assume the Air Pollution Control Board was in error in approving the original program. We are always prepared to receive evidence that it was, given time to hold a hearing. But we give some weight here, as we have before (see Sandoval Zinc Co. v. EPA, # 71-10, April 14, 1971), to the fact of APCB approval and to the company's good faith reliance in carrying out the approved program.

Giving the precedent of the APCB approval due weight; considering the short time remaining before compliance, the fact that the old cupola will be progressively less used during the debugging period that is to begin within the coming week, the nontoxic nature of the emissions, the company's location in an industrial zone, and the fact that a denial of this renewal would put over 100 employees out of work, and in the absence of any contrary evidence, we think the variance should be granted subject to certain conditions.

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

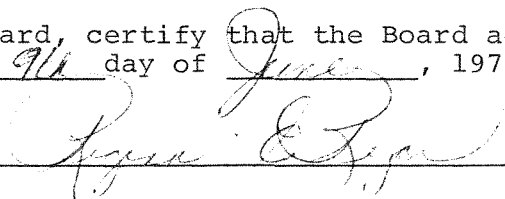
#### ORDER

Electric Wheel Co. is hereby granted permission to emit particulate air contaminants from its cupola in Quincy, Illinois, subject to the following conditions:

- 1) This variance shall terminate December 31, 1971.
- 2) Electric Wheel Co. shall conform to all conditions of its Air Contaminant Emission Reduction Program approved by the Air Pollution Control Board in 1969, including the filing of progress reports.
- 3) The emission of contaminants shall not be increased during the period of this variance.
- 4) The company shall adhere to the following schedule of improvements as described in its petition:
  - a) Installation complete and new equipment to begin operation by June 15, 1971;
  - b) Shutdown of existing cupola melting furnace, by December 31, 1971.
- 5) After June 15, 1971 the company shall make maximum use of the new equipment consistent with debugging requirements and shall utilize the present cupola melting furnace only to the extent necessary to avoid a reduction in pre-existing production levels during debugging.

- 6) The company shall post with the Agency before July 15, 1971, a bond or other security in the amount of \$20,000, which shall be forfeited in the event the terms of this order are violated.

I, Regina E. Ryan, Clerk of the Board, certify that the Board adopted the above Opinion and Order this 9th day of June, 1971.

  
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