

ILLINOIS POLLUTION CONTROL BOARD
August 13, 1992

IN THE MATTER OF:)
)
PETITION OF ELIZABETH STREET)
FOUNDRY, FOR AN ADJUSTED) AS 91-5
STANDARD FROM 35 ILL. ADM.) (Adjusted Standard)
CODE 212.321)

RICHARD J. TROY AND PETER J. TROY APPEARED ON BEHALF OF THE PETITIONER.

JANET A. MAGNUSON AND KATHLEEN C. BASSI APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On June 14, 1991, Elizabeth Street Foundry (Elizabeth Street) filed a petition with the Board seeking an adjusted standard pursuant to Section 28.1 of the Illinois Environmental Protection Act (the Act). (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1028.1.) Elizabeth Street is seeking an adjusted standard from the Board's regulations limiting particulate matter emissions from New Process Sources, specifically from Section 212.321. (35 Ill. Adm. Code 212.) This is the second adjusted standard sought by Elizabeth Street for this facility and the facility is subject to an enforcement action before the Board. (See Petition of Elizabeth Street Foundry AS 89-2; and IEPA v. Elizabeth Street Foundry, Inc. PCB 86-161.)

On July 17, 1991, the Illinois Environmental Protection Agency (Agency) filed its response to the petition recommending that the Board deny the petition. On May 1, 1992, a hearing was held in Chicago, Illinois. No members of the public were present at that hearing.

BACKGROUND

As previously noted this is the second adjusted standard sought for petitioner's facility. On August 8, 1991, the petitioner filed a motion to incorporate the record of the previous adjusted standard proceeding, AS 89-2, into this record. The Board grants that motion.

Elizabeth Street is a small operation which has been facing difficult financial times. According to the Petitioner, the foundry has been in Chicago at the same location for 100 years and currently employs 25 or 26 persons who work an average of 25

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to 30 hours a week. (Tr. at 16.)¹ The foundry produces a specific product at the request of a particular customer who furnishes the molding pattern and specifications of the type of iron (alloy contents etc.) to be used. At most the pouring process occurs every other day. (Tr. at 15-16.) The foundry has stayed substantially the same since World War I except for an office area which was destroyed by fire in 1978. (See Petition of Elizabeth Street Foundry AS 89-2, January 24, 1991.)

PROPOSED ADJUSTED STANDARD

Elizabeth Street proposed that the Board adopt the following adjusted standard:

For iron foundries with a cupola process weight less than or equal to 2.25 tons per hour and which do not melt iron more than six hours per day and not more frequently than once every other day, and which are located in an area where both the Total Suspended Particulate and PM10 Particulate Fraction Ambient Air Quality Standard is being met, the maximum allowable emission rate is 11.5 pounds per hour.

DISCUSSION

Section 28.1 of the Act allows ,in pertinent part, for an adjusted standard from a rule of general applicability upon adequate proof that:

1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner;
2. the existence of those factors justifies an adjusted standard;
3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

¹ The transcript is cited as "Tr. at ", the petition is cited as "Pet. at ", the petitioner's response is cited as "Pet. Res. at " and the Agency's comment is cited as "Ag. Com. at ".

4. the adjusted standard is consistent with any applicable federal law.

Elizabeth Street states: "[a]t the time the Board promulgated Section 212.321 it considered that persons constructing new process sources could avail themselves of the latest technologies and incorporate such technologies in the design of the facility." (Pet. at 2.) Elizabeth Street then points out that its facility is over 100 years old, and the existing facility location and plant layout makes it physically impossible to retrofit the cupola with emission control equipment without undertaking major construction. Elizabeth Street thus maintains that "[s]pace and location constraints . . . are factors substantially and significantly different from the factors relied upon by the Board" when adopting Section 212.321. (Pet. at 3.)

Elizabeth Street has estimated that the cost of installing emission control equipment at its facility would be in the range of \$300,000. (Pet. at 12) In this regard, Elizabeth Street has stated that its earnings during the last taxable year was only \$8,863, and that the installation costs would be beyond its resources. Elizabeth Street has indicated that the only viable alternative to complying with the regulations would be to dismiss all the workers and close the plant (Pet. at 12). Thus, Elizabeth Street argues the existence of these factors justifies the granting of an adjusted standard.

With regard to the final two factors, Elizabeth Street argues that the foundry only emits particulate matter every other day for a limited amount of time (5-6 hours). Therefore, according to Elizabeth Street the actual emissions from the source are significantly lower than the potential emissions from the source if the plant is operated round-the-clock in compliance with the allowable emission rate. (Pet. at 6) Further, Elizabeth Street argues that data obtained from the Agency indicates that TSP (total suspended solids) averages decreased consistently at the closest monitoring station every year since 1981 and that the primary ambient concentrations have been below the primary ambient air quality standard through 1989. The average for PM10 (particulate matter which measures less than 10 microns) have also been significantly below the ambient air quality standard. (Pet. at 8.) For these reasons Elizabeth Street maintains there would be no negative impact if the adjusted standard were granted. (Pet. at 8.)

The Agency in its response opposed the granting of the adjusted standard and in fact filed a motion to dismiss this proceeding on the basis that the adjusted standard would not be acceptable under the federal Clean Air Act provisions and that the adjusted standard would result in an increase in emissions. The Board has previously denied that motion to dismiss.

(Elizabeth Street Foundry, AS 91-5, March 11, 1992.) However, at hearing the Agency introduced testimony by Mr. Berkley Moore, an Environmental Specialist with the Agency. Mr. Moore testified as to which issues the Agency believes should bear the most weight in the Board's consideration of Elizabeth Street's request. Mr. Moore outlined four factors:

1. Although Section 106.705(g) of the Board's regulations requires Petitioner to adequately quantify the impact on the environment if Petitioner were to comply with the regulation of general applicability as compared to complying only with the proposed standard, Petitioner, has not done this.
2. Although the Board adopted regulations on April 12, 1972 designed to require all foundry cupolas to control particulate matter emissions by December 31, 1973, at the latest, Elizabeth Street Foundry has never done so.
3. The relatively small size and infrequent operating schedule of Petitioner cupola as compared to other cupolas in the State result in relatively small emissions as compared to those other cupolas.
4. Granting the petition will not result in an increased likelihood of causing or contributing to a violation of the Ambient Air Quality Standard for particulate matter because of the proposal's limitations on hours of operation. (Tr. at 28-29.)

Mr. Moore testified that "[b]ecause the Agency believes that the Board would wish to have an analysis of the quantitative impact which Petitioner did not provide, the Agency has undertaken a brief analysis of such impact". (Tr. at 30.) Mr. Scott Leopold, an Environmental Protection Specialist with the Agency, performed the modeling analysis on the impact of a relaxation of particulate emission limitations as proposed by Elizabeth Street. (Tr. at 20.) Mr. Leopold testified that the modeling analysis was designed to address two questions. The first is an assessment of the benefit that would be derived by installing control equipment so that the source would be in compliance with existing TSP limitations. The second is to determine the impact of the adjusted standard on the PM10 air quality on a 24-hour basis to determine whether or not the adjusted standard would result in a degradation of PM10 air quality. (Tr. at 21.)

Mr. Leopold stated that the modeling assessment indicates that if control measures were instituted by Elizabeth Street, the effect would be a 10 ug/m₃ improvement in PM10 air quality. (Tr. at 24.) Mr. Leopold further stated that the analysis "demonstrates that the relaxation of the particulate limit in conjunction with the limitation on operating hours will not result in a SIP deficiency, since the modeled air quality impacts from the facility are not significantly higher". (Tr. at 26.)

Mr. Moore summarized the conclusions of the Agency regarding the modeling by stating:

While it is true petitioner's proposed limit on hours of operation will obviate an otherwise increased likelihood of violating the air quality standards, it cannot be denied that the proposed relaxation will result in actual air quality that is significantly worse than it would be were the cupola to comply with Section 212.321. (Tr. at 32.)

Mr. Moore also addressed the remaining three factors in his testimony. He noted the small size of the cupola and stated that:

It is, in fact, so small that its uncontrolled particulate emissions are less than one sixth of those of the two cupolas in one of the state's larger foundry operations, even those larger emissions are well controlled. (Tr. at 35.)

He further stated:

If the Board does not promulgate Petitioner's proposed regulation, Elizabeth Street Foundry would have to either install particulate control equipment or close down. In either case, a significant improvement in air quality would result. If, however, the Board grants the regulatory relief, actual air quality in an area that already meets the PM10 air quality standards will not or could not get worse. In addition Elizabeth Street's emission [sic] are truly much smaller than those of most foundries. (Tr. at 36-37.)

Elizabeth Street stated in its response to Agency final comments that the Agency was correct in that it did not

adequately quantify the impact of the proposed standard on the environment. (Pet. Res. at 1.) However, Elizabeth Street maintains that its failure to do so was a result of its financial plight. Elizabeth Street is willing to accept the Agency's analysis on the issue of the impact to the environment.

CONCLUSION

Section 28.1 of the Act allows for an adjusted standard from a rule when certain conditions have been met upon adequate proof by the petitioner. Following a careful review of the record, the Board will grant the requested adjusted standard.

The Board finds that the circumstances surrounding the petitioner are substantially and significantly different from the factors relied upon by the Board when adopting the general standard. Elizabeth Street is unique in its small size and also in that the location of the foundry makes the use of certain emission controls cost prohibitive. In addition, the foundry has a long history of financial plight and the cost of placing emission control devices could cause the closing of the foundry.² Further, the Board finds that these factors justify the granting of an adjusted standard, when combined with the finding that the requested standard will not result in substantial environmental or health effects.

Despite the Agency's position that it does not support granting the adjusted standard, the Agency points out that the small size and infrequent operating schedule of the petitioner's cupola will result in relatively few emissions. (Ag. Com. at 6.) Further, although Elizabeth Street did not adequately quantify the environmental impact that compliance with the general standard would have, the Agency offered for the Board's consideration a modeling analysis. The analysis clearly indicates that if the foundry met the standard of general applicability there would be a corresponding improvement in air quality. However, that is true in every case where an adjusted standard is sought for air. More significantly the modeling indicates that a granting of the adjusted standard will not result in a worsening of the air quality. (Tr. at 26). Therefore, the Board finds that the environmental and health effects are not substantially or significantly more adverse than the effects considered by the Board when adopting the general standard.

Neither the petitioner nor the Agency has stated whether the

² The Board notes that when granting permanent relief the Board does not view the financial plight of a petitioner as dispositive. (See Elizabeth Street Foundry, AS 89-2.)

adjusted standard is consistent with federal law. However, the Agency has indicated that granting the adjusted standard will not result in violation of the national ambient air quality standards. (Tr. at 29). Therefore, after reviewing all of the factors, the Board will grant the requested adjusted standard.

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

ORDER

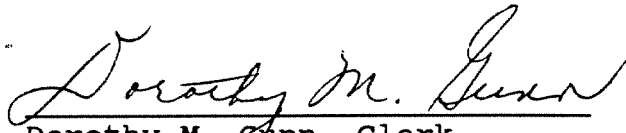
The Board hereby grants Elizabeth Street Foundry an adjusted standard from 35 Ill. Adm. Code 212.321 with the following conditions:

For iron foundries with a cupola process weight less than or equal to 2.25 tons per hour and which do not melt iron more than six hours per day and not more frequently than once every other day, and which are located in an area where both the Total Suspended Particulate and PM10 Particulate Fraction Ambient Air Quality Standard is being met, the maximum allowable emission rate is 11.5 pounds per hour.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 13th day of August, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board