

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 1984

TARACORP, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-56
	)	PCB 84-58
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a May 1, 1984 petition for review of permit denial and for variance filed on behalf of Taracorp, Inc. Taracorp seeks review of the Illinois Environmental Protection Agency's (Agency's) March 29, 1984 denial of Taracorp's applications for operating permits under the Board's air pollution regulations with respect to certain operations at its Granite City plant. Taracorp also contends that the requirement of Section 39(a) of the Environmental Protection Act that it prove that those operations will not result in a violation of the Act or Board rules as a prerequisite to permit issuance would impose an arbitrary or unreasonable hardship. Taracorp, therefore, seeks a variance from that requirement, in essence requesting to be exempted from the permit requirement in its entirety.

Taracorp has fashioned its dual requests so as to be nearly inextricably intertwined. The Board will, however, separate them. In a permit appeal, the question before the Board is whether the Agency made the proper permitting determination based upon the information before it at the time of that decision. A subsequently granted variance affecting that facility is, therefore, irrelevant. Conversely, the decision on the permit appeal has no relevance to a decision on the variance request, despite the fact that the requested variance goes to the essence of the permit requirement. Furthermore, the present permit appeal is adequate to be authorized for hearing while the variance request is not, and the Board cannot delay the permit appeal, for which there is a statutory deadline for final Board action, for the time period during which the variance request is

amended so as to correct its deficiencies. Therefore, the permit appeal is authorized for hearing under docket number PCB 84-56 and new docket PCB 84-58 is hereby opened for the variance petition. That part of the introductory paragraph of the May 1, 1984, filing which refers to the variance, all of the last paragraph of section 8(B) and the penultimate sentence of the filing are hereby stricken from PCB 84-56 and will be considered as the petition in PCB 84-58 along with paragraph 9, which should be replaced by the amended petition ordered below.

The Board finds that the petition in PCB 84-58 is deficient. First, the request for relief is unclear. As noted above, Taracorp appears to request variance from the necessity of demonstrating compliance with the lead ambient air quality standard pursuant to Section 39(a) of the Act rather than from the lead ambient air quality standard itself. If so, Taracorp is requesting variance from the only fundamental statutory requirement for permit issuance, and a question arises as to the Board's authority to grant such relief. Second, Taracorp has not presented a description of the activity for which variance has been requested, including the quantity of material used [Section 104.121(c)]. Third, it has not stated the quantity and types of materials discharged [Section 103.121(d)]. Fourth, it has not described the nature and extent of present non-compliance [Section 104.121(e)]. Fifth, it has not provided an assessment of the environmental impact [Section 104.121(g)]. Sixth, it has not discussed past efforts to achieve compliance [Section 104.121(h)]. Seventh, it has not discussed alternative means of compliance (Section 104.121(i)), and, finally, it has not presented "a concise factual statement" of the reasons it would suffer an arbitrary or unreasonable hardship [Section 104.121(j)].

Unless Taracorp files an amended petition within 45 days of the date of this Order under PCB 84-58, the petition will be subject to dismissal. The Board notes that some of the cited defects may appear irrelevant in the context of the present variance request and that that may reflect on the propriety of the request.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 3<sup>RD</sup> day of May, 1984 by a vote of 6-0.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board