ILLINOIS POLLUTION CONTROL BOARD
October 28, 1971

FREEMAN COAL COMPANY	)	
	)	
	)	#71-78
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

MR. RICHARD ELLEDGE, ATTORNEY FOR PETITIONER, FREEMAN COAL COMPANY
MR. JOHN McCREERY, ATTORNEY FOR ENVIRONMENTAL PROTECTION AGENCY

OPINION OF THE BOARD (BY MR. DUMELLE):

Petitioner, Freeman Coal Company ("Freeman"), seeks a variance to continue operating a coal processing plant at its Orient #3 Mine near Waltonville, Illinois, in violation of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution. This mine produces 3 million tons of low sulphur coal annually (20% of the Illinois total), employs 630 persons and has an annual payroll in excess of $5,000,000.00.

Each of four air cleaning tables in the mine's processing plant emits an estimated 110 pounds of particulate matter per hour (R.287). The allowable limit is 46.3 pounds per hour from each table. In April of 1971, Freeman shut down three air tables and a heat drier which had been emission sources of an estimated 420 pounds of particulate per hour.

The processing plant separates 12,000 tons of raw coal daily into "minus 7/16"" ("fine coal") and "plus 7/16"". 60% of the coal is separated and is cleaned of impurities by using wet methods which pose no emission problem. 40% of the coal ("fine coal") is separated and cleaned by running it across fluidized air beds which are the subject of this variance proceeding. Freeman proposes to replace this method of cleaning the "fine coal" with a new facility employing a wet process, which will include flotation and heavy media cyclones, and a new drier controlled by a high energy wet scrubber (R.242-246), and which will bring the plant into compliance with the Regulations. Freeman states that it will require 18 to 20 months for installation of this plant.

For the following reasons and subject to several conditions, we grant a variance to operate the four air cleaning tables for one year.

The Environmental Protection Agency (Agency) Recommendation asks that we deny the variance, or, in the alternative, that we grant it with the requirement that Freeman pay a penalty and begin immediate installation of facilities and equipment necessary for compliance. The Agency further attempted to show that Freeman could feasibly pursue several interim steps designed to reduce the emissions from the processing plant pending completion of the new facility.

With the exception of the penalty, we find no merit in the Recommendation. The Agency failed to establish that construction of the new facility could be done more quickly than 18 to 20 months. Petitioner satisfactorily rejected each of several suggestions for interim control measures. Freeman cannot sell the minus 7/16" coal in an uncleaned state; the raw coal has too high an ash content and no market for it exists (R.9, 15 and 17). The company cannot stockpile 40% of its production to be cleaned when the new facility has been completed because space is unavailable and because stockpiling in any event poses a fire hazard (R.32-35, 73). Nor can Freeman ship coal from Orient #3 Mine to a recently completed processing plant at Orient #6 Mine, several miles away, in order for such coal to be cleaned there pending completion of the new plant at Orient #3 Mine. Facilities do not exist for shipping coal in such amounts or for receiving and processing it at Orient #6 (R.90-91).

Finally, the Agency has failed to lend substance to its Recommendation that we deny the variance petition. Freeman has established on the one hand that it will need considerable time for construction of the new plant and that to deny the variance would pose a severe economic hardship for630 employees who would have to be laid off for eighteen to twenty months, and would deprive Freeman customers of much needed low sulphur coal.

On the other hand, Freeman has demonstrated that there is only a slight public nuisance from the plant's emissions at present (perhaps reduced by as much as 54% by the recent shut-down of three air tables) (R.193, 194, 232, 235). Air quality data compiled by Freeman shows air in the vicinity of the plant to be in compliance with National Primary and Secondary Ambient Air Quality Standards (R.334). The Agency failed to produce any local complainant, and no public testimony in protest of granting the variance was heard (the possibility that, as one witness testified, the emissions from the plant may be inadvertently recirculated by draft fans into the mine, thus affecting mine air quality,is a consideration of industrial hygiene beyond our jurisdiction absent a showing that "in-plant" air contaminates the ambient air).

In light of the company's voluntary 54% reduction in processing operations, the absence of any significant showing of public harm and the economic burden imposed upon many workers by a plant lay-off are adequate reasons for granting this variance.

But Freeman failed to submit an Air Contaminant Emission Reduction Program (Acerp) as required by law in 1968. The timely submission of an Acerp could have led to closer scrutiny of Freeman's efforts to control its emission problem, would have put Freeman under a specific compliance deadline (which not unreasonably could have been considerably sooner), and conceivably could have resulted in an outright denial of a request for more time (as what the company wants to do today was technically and economically feasible in 1968.) (R.44, 109).Freeman contends that there were significant technical reasons requiring Orient #6 processing plant to be built before the Orient #3 plant (R.45); that the company wanted to avoid spending funds simultaneously on the two plants (R.71); and that an adequate supply of mining engineers was unavailable to supervise simultaneous construction (R.268). No significant technical reason is shown requiring Orient #6 plant to be built prior to Orient #3 plant. The plants are basically similar and while some problems have been encountered in the operation of Orient #6 plant, this plant is not a prototype to the mining industry (R.12, 45). In addition, Freeman's parent corporation, General Dynamics, made a profit of $57,000,000.00 in 1967 and $38,000,000.00 in 1968 (R.109). While the supply of mining engineers may have been inadequate to permit simultaneous construction of the two plants, it is just such questions as these and other considerations raised by scrutinizing a concrete control program which the Acerp hearing was designed to answer.

In its Letter of Intent submitted in 1967, Petitioner stated that it would, upon completion of a new processing plant at Orient #6 Mine, close down Orient #3 Mine while rebuilding its processing plant. Freeman's need apparently was to permit Orient #6 Mine to be finished in order to use it for meeting buyer demands for low ash coal from Orient #3 Mine. Now Freeman states that it wishes to continue operating Orient #3 Mine even though Orient #6 Mine is prepared to operate, pending the completion of the new processing plant at Orient #3 Mine. (Variance Petition and R.292). Thus, it appears that while the carrot of lower pollution levels was offered in a statement of good intentions, the company's vague plan has changed, resulting in more emissions than would have otherwise been the case. This has occurred without an initial opportunity for pollution control authorities to analyze, to approve, or to disapprove a concrete abatement proposal.

In any event, the Regulations are designed to produce a clean environment as quickly as possible in accordance with technological feasibility and economic reasonableness. If they are to have meaning, they must be enforced. The fact that the Company's pollution impact(as duced) may be nil or minimal, is merely a mitigating consideration. To carry out the purpose of compliance with the Regulations, we impose a token penalty of $5,000.00. Malibu Village Land Trust v. Environmental Protection Agency, #PCB70-45.

Finally, pursuant to Pollution Control Board Rule No. 107, Petitioner has moved for non-disclosure of pages 50 through 61 of the transcript. In support of this motion, Petitioner states that disclosure of the price of the new processing plant, which is discussed in these pages, would harm the company's relationship with contractors and would impair Freeman's competitive position in the coal industry because part of the cost basis for coal sold from Orient #3 Mine would thereby be revealed to other mining companies.

Neither argument is impressive. Reason may exist for non-disclosure of a bid prior to its acceptance by a company, but Freeman, subsequent to the hearing, awarded a contract to one of the several bidders. Nor has petititioner submitted evidence that public knowledge of the cost of its new processing plant would injure Freeman's competitive position. Such an inference is not obvious and we will not block public access to our records on the basis of a mere assertion of the need for secrecy.

Mr. Lawton took no part in these proceedings.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS HEREBY ORDERED THAT:

1. Variance is granted Petitioner until October 27, 1972 to operate the four air cleaning tables which are the subject of this hearing, in violation of Section 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution, subject to the following conditions:

2. Petitioner shall, within 90 days of receipt of this Order, submit to the Agency a schedule outlining the interim stages of construction and installation of the new processing plant at Orient #3 Mine, and specifying the date by which it is anticipated each stage will be completed.

3. Petitioner shall petition this Board 90 days in advance of said expiration date for an extension of this variance, demonstrating that it has diligently pursued the goal of total installation by April 30, 1973 of its new coal preparation plant and that it has complied with the interim stages of said installation as required in Paragraph 2 of this Order.

4. Petitioner shall, within 35 days of receipt of this Order, post with the Agency a bond or other security in the amount of $125,000.00 in a form satisfactory to the Agency which sum shall be forfeited to the State of Illinois in the event that the conditions of this Order are not met or the air tables in question are operated in violation of the Rules and Regulations Governing the Control of Air Pollution after October 27, 1972 without a variance.

5. Petitioner shall pay a money penalty in the amount of $5,000.00 for failing to submit an Air Contaminant Emission Reduction Program as required by Section 2-2.41 of the Rules and Regulations Governing the Control of Air Pollution.

6. Petitioner's motion for non-disclosure of pages 50 to 61 of the transcript herein is denied.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 28 day of October, 1971.