

ILLINOIS POLLUTION CONTROL BOARD
June 25, 1987

AMERICAN STEEL CONTAINER CO.,)	
PAIL SHOP,)	
)	
Petitioner,)	
)	
v.)	PCB 86-22
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent,)	
)	
and)	
)	
AMERICAN STEEL CONTAINER CO.,)	
DRUM SHOP,)	
)	
Petitioner,)	
)	
v.)	PCB 86-23
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	
<hr/>		
AMERICAN STEEL CONTAINER CO.,)	
PAIL SHOP,)	
)	
Petitioner,)	
)	
v.)	PCB 87-90
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent,)	
)	
and)	
)	
AMERICAN STEEL CONTAINER CO.,)	
DRUM SHOP,)	
)	
Petitioner,)	
)	
v.)	PCB 87-91
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	(NOT CONSOLIDATED)
AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Anderson):

On April 16, 1987, the Board entered an Opinion and Order granting ASCC's request for variance from certain VOC regulations for its Drum Shop and its Pail Shop. Now pending before the Board are ASCC's June 1 motions for extension of compliance deadlines, and the Agency's June 8 responses in opposition thereto. On June 8, 1987, the Agency additionally filed motions to strike ASCC's motions as untimely, to which ASCC filed responses in opposition on June 12.

The April 16 grant of variance was premised on a compliance program proposed by ASCC. This program was to involve venting of fumes from the spray booths and interior ovens in the Drum Shop to the existing drum incinerator. ASCC further anticipated that the Pail Shop would also be brought into compliance by this method, through offsets for the Drum Shop's reduced emissions pursuant to the "bubble concept". The Order established certain intermediate deadlines for performance of various activities relative to this plan, and required that compliance be achieved by December 31, 1987.

After entry of the Order, ASCC had two routes in which to make a timely response to the Order. The first was to file a motion for modification of the Order within 35 days pursuant to 35 Ill. Adm. Code 103.240; such filing would have been due on May 21. The second would have been to file a certificate of acceptance and agreement to be bound by the terms of the variance within 45 days pursuant to Paragraph 2 of the Order; such filing would have been due on June 1, since May 31 was a Sunday.

ASCC did neither. Instead it filed a motion for extension on June 1. ASCC asserts that since the date of hearing in this matter, January 20, that it had consulted with three additional companies or individuals concerning compliance efforts. ASCC asserts that the most recent study, conducted by Anguil Energy Systems, Inc. of Milwaukee, Wisconsin, was not completed until May 22. This study concluded that the proposed reducing of fumes to the drum incinerator would pose a long-term potential fire danger. For this reason, ASCC will not certify acceptance of the April 16 variance. ASCC requests that the Board

"enter an order extending the deadlines set forth in the compliance timetable of its order dated April 16, 1987 for an indefinite period of time pending a hearing on modification of said variance order. ASCC further requests that the Board grant it leave to file a supplement to the instant motion for modification after ASCC receives a revised and final report from its consultant, Anguil Energy Systems, Inc., regarding the alternative compliance programs. Finally, ASCC requests that the Board

schedule this matter for hearing on modification of the aforesaid order after ASCC files its supplement to the instant motion."

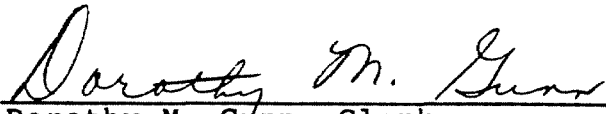
The Agency's objections to the motions to extend are procedural. One procedural objection is that the motion to modify is 10 days late. Another is that the motions should be construed as a request for variance from the Board's April 16 Order, and that the "petition" is deficient as it fails to contain a compliance plan.

This action now resides in a procedural morass. As ASCC had declined to certify acceptance of the April 16 Order, that Order has force and effect of only a limited nature. As ASCC has not agreed to the Order, its conditions are not applicable to ASCC, and ASCC has no variance. Thus, variance from this Order would be inappropriate. On the other hand, the Order continues in force as the Board's final determination of that matter within the statutory decision deadline is extended by waiver, so that variance cannot be deemed to have issued by operation of law.

While there is no entirely tidy way to handle this situation, the Board will attempt to accommodate both parties' concerns. The Agency's motion to strike and dismiss are denied. ASCC's June 1 motions are construed as new petitions for variance, and will be docketed as PCB 87-90 and PCB 87-91. These petitions are deficient for failure to contain a compliance plan. ASCC is directed to file amended petitions which contain compliance plans and which otherwise incorporate and update the prior records in these matters within 45 days of the date of this Order, or these petitions will be subject to dismissal. Hearings will be held in these dockets, but they will be scheduled only after receipt of complete and sufficient amended petitions.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of June, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board