

ILLINOIS POLLUTION CONTROL BOARD
December 29, 1983

G.D. SEARLE & CO. AND SEARLE)
FOOD RESOURCES, INC. AND PARK)
FOREST SOUTH UTILITIES COMPANY,)
)
Petitioners,)
)
v.) PCB 83-73
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

DISSENTING OPINION (by B. Forcade)

The majority has granted five year variances to Searle and PFSU knowing that operations under these variances will cause or contribute to downstream violations of water quality standards. I respectfully dissent for three reasons: (1) the holding violates prior Board precedent, (2) the variance is premature, and (3) the variance grant destroys the incentive for reduction of pollutant loadings to Deer Creek before 1988.

In PCB 83-11, August 18, 1983, CPC International, Inc. ("CPC") filed a petition for variance with this Board concerning its SO₂ air emissions. The Board found that CPC was presently in compliance with applicable rules, technology existed for CPC to remain in compliance (continued burning of low-sulfur coal), the only hardship claimed was economic, and that if the variance was granted ambient air quality standards would not be violated. In denying the variance, the majority of the Board held:

CPC is requesting to go out of compliance with Rule 204(f) to save money and possibly increase the use of Illinois coal, i.e., medium sulfur coal, in keeping with Section 9.2 of the Act. This form of relief is inconsistent with Title IX of the Act. (Slip Opinion, p. 3)


In this matter Searle is in compliance with applicable regulations, technology exists for Searle to remain in compliance (continued off-site disposal), the only hardship to continued off-site disposal is economic, and grant of the variance will cause or contribute to violations of water quality standards. As I believe CPC was correctly decided, I dissent here.

Moreover, the variance is premature. Searle admits that it is investigating methods of reducing TDS levels and all preliminary reports will be completed within five months (Amend. Pet., ¶ 19). The Order in this case requires Searle to conduct additional

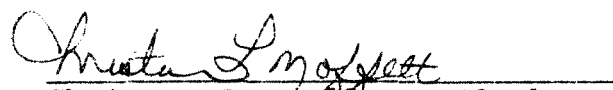
studies on the impact of high TDS on drinking water and irrigation in the area (Order, ¶ (1)(f)). I would dismiss the variance petition with leave to refile when this preliminary information becomes available so that the Board could make a more informed decision. The substantial increase in disposal fees to Searle will depend on new discharges from Trains III and IV. The record is not clear on when those discharges will commence (R. 34-36), but the Agency asserts that Trains III and IV are not included in the existing permit (R. 39) and additional permits may take six months to secure. I do not believe it is unreasonable to conclude that past discharge levels will be maintained for the next six months. By that time significant additional information may be available on control options and environmental impacts. At that time the Board could grant a variance to allow completion of final studies and construction of any improvements necessary to implement promising alternative control options. Thus, this grant of variance is premature.

Lastly, I believe a full five year variance should not be granted unless all relevant facts are firmly established. Should investigation show that the environmental harm is great and that viable control options could be rapidly and economically implemented, the five year variance grant would be imprudent. If such a worst case scenario develops, any corporation with less professional integrity than Searle might continue operations under the relaxed variance conditions for the full five years. Therefore, the Order sets a bad precedent.

For these reasons, I would dismiss the variance petition with leave to refile when more information is available on possible environmental harm and alternative control strategies.


 Bill Forcade, Board Member

I Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 3RD day of January, 1984.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board