

ILLINOIS POLLUTION CONTROL BOARD
November 10, 1977

THE VILLAGE OF WINNETKA, a)
Municipal Corporation,)
)
Petitioner,)
)
v.) PCB 77-249
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Young):

The Village of Winnetka filed a Petition on September 21, 1977, for a variance from Rule 103(g)(1) of the Air Pollution Regulations (Chapter 2) to allow the operation of certain coal-fired boilers (identified as 5, 6, and 7) in the generation of electricity at a utility plant owned and operated by the Village in Winnetka, Illinois, under three emergency conditions set forth in Paragraph 5 of the Petition.

On October 4, 1977, Respondent Illinois Environmental Protection Agency filed a Motion to Dismiss, stating that the emergency conditions set forth in Paragraph 5 of the Petition are no more than remote contingencies, together with the recital of several other perceived deficiencies in the Petition. No response to the Motion to Dismiss was filed by the Petitioner.

Paragraph 22 of the Petition reads as follows:

"On September 1, 1977, the Board issued its Opinion and Order in the case of WIPE v. Village of Winnetka, PCB No. 75-363. The Board took note of the Petitioner's interpretation of the Board's earlier dismissal in case No. 75-107, of a variance petition to utilize the same subject boilers in an emergency. The Board stated in its Opinion in case No. 75-363 that 'Respondent might be well advised to file an updated petition for variance if similar future use of the unit is contemplated.' Petitioner hereby files its updated Petition, in the belief that the occurrence of instances of need for emergency use of the type contemplated have been demonstrated, and that its Petition is not 'speculative', as earlier found by the Board."

In the case of WIPE v. Village of Winnetka, PCB 75-363, referred to in Paragraph 22 above, the following appears at page 5:

"In March, 1975, Respondent filed a Petition (PCB 75-107) seeking in part an extension of a prior variance to allow the use of Boiler No. 7 under conditions similar to those which were testified to as the conditions of use in the instant case. (See condition (a)(3) of the Order in PCB 74-180, 13 PCB 587, 589.) On January 22, 1976, the Board denied and dismissed PCB 75-107 on the ground that the Board does not grant speculative emergency variances (19 PCB 713, 714). Mr. Wilbur F. Legg, an attorney and one of the Trustees of the Village of Winnetka and Chairman of the Village Council's Public Utilities Committee, testified that he interpreted the Board's opinion to mean that Respondent could operate the boiler under emergency circumstances without a permit (R. p72). As recognized by counsel for Respondent in his closing remarks (R. pl00), Respondent might be well advised to file an updated Petition for Variance if similar future use of the unit is contemplated."

Condition (a)(3) of the Order in PCB 74-180 reads as follows:

- "a) The Village shall be allowed to burn coal as a fuel during the following situations:
3. When gas, as a fuel, is not available, and it is necessary to bank boilers and/or to heat the generating plant. Coal usage, under these circumstances, must not exceed 3% of rated fuel input."

It is nowhere alleged in the instant Petition for Variance that the Petitioner intends future operation of Boiler No. 7 under conditions similar to those testified to in PCB 75-363 and in condition (a)(3) of the Order in PCB 74-180. To the contrary, Paragraph 20 of the Petition reads, in part, as follows:

".... Petitioner has purchased and installed infra-red heating units to permit the heating of the plant, without need to bank the subject boilers, as had been the case prior to the Spring of 1977."

It is painfully obvious that the Petitioner may have read much more into that portion of the opinion in PCB 75-363 quoted above than that intended by the Board, for the Petition submitted, although more comprehensive, is a request to operate Boilers 5, 6, and 7 under speculative emergency situations as in PCB 75-107 rather than a variance petition to allow operation of Boiler 7 in a banked condition without a permit to provide heat for the plant under circumstances similar to those which had been testified to in PCB 75-363.

The Board will not grant speculative emergency variances (Galesburg State Research Hospital v. EPA, PCB 75-198, 18 PCB 268; City of Carlyle v. EPA, PCB 75-165, 17 PCB 53, PCB 75-253, 18 PCB 153; City of Highland v. EPA, PCB 75-50, 19 PCB 470; Village of Winnetka v. EPA, PCB 75-107, 19 PCB 713; City of Breese v. EPA, PCB 77-200, _____ PCB _____, [September 15, 1977]).

Based upon the foregoing, the Motion to Dismiss will be granted.

On October 12, 1977, an unincorporated association comprised of citizens and residents of the Village of Winnetka styled as Winnetkans Interested in Protecting the Environment (WIPE) filed an objection and petition to intervene pursuant to Rules 404 and 310(a) of the Board's Procedural Rules. In view of the action taken on the Motion to Dismiss, the issues raised by the objection and petition to intervene are moot.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Respondent's Motion to Dismiss filed October 4, 1977, is granted; the Petition for Variance shall be dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of November, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board