

ILLINOIS POLLUTION CONTROL BOARD
April 28, 1977

C. EUGENE BURGETT,)
)
) Petitioner,)
)
) v.) PCB 76-258
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

Mr. Wayne L. Bickes, Attorney, appeared for the Petitioner;
Mr. James Bumgarner, Attorney, appeared for the Respondent.

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

This matter is before the Board on a Petition for Variance filed by C. Eugene Burgett on October 18, 1976, seeking relief from Section 24 of the Environmental Protection Act (Act) and those portions of the Board's Noise Pollution Control Regulations applicable to Petitioner's facility. Ill. Rev. Stat., Ch. 111-1/2, §1024 (1977); Ill. PCB Regs., Ch. 8, §101 et seq. A Recommendation was received from the Environmental Protection Agency (Agency) on December 6, 1976.

Pursuant to a timely objection received on October 26, 1976, the Board ordered the matter set for hearing. The hearing was held on March 18, 1977, and no citizens appeared to further object. Although no evidence was presented by either party at hearing, Petitioner did agree to the conditions on which the Agency based its Recommendation that the Variance be granted. Based on that agreement by Petitioner, the Agency reaffirms its Recommendation.

The subject of this Variance is a sand and gravel pit operated by Mr. Burgett, d/b/a C. E. Burgett Construction Co., at R.F.D. #7, Decatur, Illinois. The production from Mr. Burgett's operation is sold exclusively to municipalities for use in road construction. The sand and gravel pits constitutes Class "C" land, as defined in the Noise Pollution Control Regulations, and is adjacent to several residents which constitute Class "A" land, as defined in those same Regulations.

Noise complaints were first made to the Agency about Mr. Burgett's operations in August, 1973. The equipment involved in the operation, causing the admitted noise violations, included at that time a rock crusher, two end loaders, and a crane. After being contacted by the Agency regarding these violations, the Petitioner relocated his rock crushing operation at a cost of approximately \$2,000.00; that change

resulted in complete abatement of violation by that portion of Petitioner's operations. Petitioner also refitted certain equipment with mufflers, at a cost of \$100-\$200. In addition, Mr. Burgett has relocated one of the end loaders to another location.

These changes have not, however, resulted in complete compliance at the sand and gravel pit. As a result, Mr. Burgett is requesting a Variance to allow continued operation until November 15, 1977, after which date the site in question will be permanently closed.

In recommending that the Variance be granted, the Agency noted that compliance at Mr. Burgett's sand and gravel pit could only be achieved by the erection of a barrier costing approximately \$60,000. The Agency also noted that Mr. Burgett has been cooperative in his past attempts to attenuate the noise levels resulting from his operations. Based on these facts and the imminent cessation of all activity at the site, the Agency recommends that a Variance be granted.

After concluding operations on the site in November, 1977, Petitioner intends to convert the existing sand and gravel pit to a recreational lake. The area surrounding that lake will be subdivided.

We agree that a Variance is warranted in this case. Respondent's prior attempts at compliance should minimize the environmental harm done under the Variance. When weighed against the hardship involved were the Variance not granted, (the expenditure of \$60,000 for construction of a barrier for only one additional season of operation), our decision to grant the Variance is further supported.

The conditions to which Petitioner has agreed should further alleviate any problems which might result. Petitioner agrees that except for noises emitted by the end loader and crane remaining on the site, there will be no additional violations of the numerical limits for noise emissions in Rules 202 and 206. Petitioner agrees to operate that equipment in a manner intended to reduce the noise emitted as much as possible, and to operate that equipment only between 8:00 a.m. and 4:30 p.m. The amount of equipment on the site will not be increased, and Petitioner shall cease operation by November 15, 1977, regardless of whether his production volume of 30,000 cubic yards have been achieved. We shall also require a standard certificate of acceptance.

We shall not, however, grant the requested Variance from §24 of the Act. Variance from the limitations in Rules 202 and 206 of Chapter 8: Noise Pollution, will suffice.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Petitioner C. Eugene Burgett be granted Variance from the noise emission limitations of Rules 202 and 206 of Chapter 8: Noise Pollution, of this Board's Rules and Regulations for noise emissions from a Hough 120 end loader and a BLH Lima crane to be operated at Petitioner's Decatur, Illinois, sand and gravel pit, from the date of this Order until November 15, 1977, conditioned upon compliance with the following:

1. Except for that equipment for which Variance has been granted, Petitioner's operation at said site shall comply with Rules 202 and 206 of Chapter 8: Noise Pollution.

2. Petitioner shall operate such equipment in a manner intended to reduce, as much as possible, noise emissions therefrom.

3. Petitioner shall operate said equipment only between the hours of 8:00 a.m. and 4:30 p.m.

4. Petitioner shall not increase the amount or quantity of equipment operated on said site.

5. Petitioner shall cease all activities on said site by November 15, 1977.

6. Petitioner shall, within thirty (30) days of the date of this Order, execute and forward to the Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance in the following form:

I, (We), _____ having read the Order of the Illinois Pollution Control Board in case No. PCB 76-258, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of April, 1977, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board