

ILLINOIS POLLUTION CONTROL BOARD
October 9, 1975

E. I. DU PONT DE NEMOURS & COMPANY,)
)
) Petitioner,)
))
) vs.) PCB 75-137
))
ENVIRONMENTAL PROTECTION AGENCY,)
))
) Respondent.)

INTERIM OPINION OF THE BOARD (by Mr. Henss):

E. I. Du Pont De Nemours & Company filed its Petition for Variance seeking relief from Rule 103(b)(6) of the Illinois Air Pollution Control Regulations. Variance is sought so that Petitioner can secure an operating permit "without specifying the level of emissions" from its ammonium nitrate prill plant.

Petitioner's ammonium nitrate prill plant is located at Seneca, LaSalle County, Illinois. Application for operating permit was first filed on November 20, 1972. The permit application was denied by the Agency on June 6, 1973 and this denial was upheld by the Board in January 1974. Petitioner then set about the task of providing more accurate measurements of its particulate emissions. Since no suitable test method was available, Petitioner had to develop an entirely new test procedure.

Stack tests conducted using the new test method led Petitioner to believe that its particulate emissions were in compliance with Rule 203, Air Pollution Regulations, and a new permit application was submitted in June 1974. This application was denied because the Agency would not accept certain conditions of the test program.

As the matter now stands, the parties have developed another stack testing procedure which is to be utilized for testing of emissions from the prill tower beginning August 11, 1975. Results from these tests have not been submitted to date. Du Pont has waived the requirement that our decision be made within 90 days after the filing of the Petition.

The Board issues this Interim Opinion now because the Agency has submitted a favorable Recommendation and Petitioner may be waiting for the Board to rule on the petition based upon the Agency Recommendation.

Petitioner has not requested relief from a substantive emission standard but rather from a procedural requirement of the permit system. Granting this variance would satisfy the requirements of Rule 103(b)(6)(A) thus allowing the Agency to issue Du Pont an operating permit for an operation which emits an unspecified quantity of particulate matter. Such a variance would be tantamount to our abandonment of the permit system and should not be contended if there is any feasible method for establishing the level of particulate emissions. If Du Pont can prove that its emissions are in compliance with Rule 203 (particulates) then it will not need a variance from any regulation in order to obtain a permit. If it can be established that the particulate emissions are in excess of the standard established by Rule 203 then it would be inappropriate to withhold that information from State agencies. In that event, the variance, if any, should be from Rule 203. Du Pont does not request a variance from Rule 203 in this action.

In order to obtain a variance from Rule 103(b)(6)(A) Petitioner must establish that it is not technically feasible or economically reasonable to determine the particulate emissions from its plant. Such a variance request would require a most thorough discussion of all of the various methods which might be available for determining the extent of Petitioner's emissions. In addition, we would need legal briefs as to the impact of the United States Supreme Court decision, *Train vs. NRDC*, 43 USLW 4467, in such a variance proceeding. The Agency apparently believes that the *Train* decision is not applicable to a variance which involves a procedural requirement rather than a substantive emission standard. We must be careful, however, that the intent of the *Train* decision and the Clean Air Act not be circumvented.

It is the obligation of the State to enforce such emission limitations, schedules and time tables as will ensure timely attainment and maintenance of the national air quality standards. How does the State meet that obligation if it does not determine the extent of emissions from a plant and the impact of those emissions upon air quality in the community?

This Opinion is issued to provide some direction to the parties as they prepare to file their additional information with the Board. It is the Order of the Board that the additional information contemplated by the parties and this Opinion be filed within 45 days.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted the 9th day of October, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board