

ILLINOIS POLLUTION CONTROL BOARD  
October 30, 1975

AMERICAN HOME PRODUCTS CORP., )  
E. J. BRACH & SONS DIVISION, )  
 )  
Petitioner, )  
 )  
v. ) PCB 75-233  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

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

Petitioner American Home Products Corp., (American), filed a Petition for Variance on June 5, 1975. On June 13, 1975, the Board entered an Interim Order requiring that American submit further information in an Amended Petition regarding the effect of American's emissions on the attainment or maintenance of national ambient air quality standards. American thereafter filed an Amended Petition on August 11, 1975. The Recommendation of the Environmental Protection Agency, (Agency), was filed on September 25, 1975. No hearing was held in this matter.

American's E. J. Brach & Sons Division, a confectionary plant, is located in Chicago, Illinois. American has four boilers for the generation of steam at its Brach division. Boiler No. 1, a coal-fired boiler constructed in 1925, has not been used for several years. Boilers No. 2 and 3, also coal-fired, were constructed in 1939 and 1948, respectively. Boiler No. 4 uses either oil or natural gas as a fuel; it was constructed in 1962.

American seeks a Variance for Boilers No. 2 and 3 from Rule 203(g)(1)(A) of Chapter 2: Air Pollution, of the Pollution Control Board (Board) Rules and Regulations, until December 31, 1976, or until the installation of a new gas/oil-fired boiler, whichever is sooner. American also seeks Variances from Rules 103(b)2 and 104 for boilers No. 2 and 3, for the same period. Finally, American seeks a Variance from Rule 103(b)2 for boiler No. 4, (the existing gas/oil-fired boiler), until November 15, 1975.

Brach does not presently have permits from the Agency for the operation of any of the boilers at its plant. In addition, American states that boilers No. 2 and 3, (the presently used coal-fired boilers), are in violation of the Board's particulate emission regulations under Rule 203(g)(1)(A).

American originally intended to replace the coal-fired boilers at its Brach plant by purchasing steam from a proposed City of Chicago garbage incinerator to be located near the Brach plant, (Petition Ex. A). Because of difficulties with the reliability of steam supply from the city incinerator, American decided in 1973 that such a plan was not feasible, (Petition, 4).

American's Petition also rules out the use of particulate controls with its present coal-fired boilers, and proposes as a compliance plan the replacement of those boilers with a gas/oil-fired boiler to be constructed in the future. However, American qualifies its compliance plan for the Brach plant by stating that the installation of a proposed gas/oil-fired boiler remains subject to "corporate approval." Thus, American has no firm plan for compliance with the applicable particulate emission regulations.

This Petition for Variance would normally be dismissed solely for lack of a firm compliance plan, without further consideration. We simply will not grant a Variance where Petitioner has conditioned its future compliance on vague and unexplained decisions to be reached internally by Petitioner. In this case, however, there is an additional reason for dismissing the Variance Petition.

Petitioner's Amended Petition does not indicate that continued operation of American's coal-fired boilers at the Brach plant will not contribute to a violation of national ambient air quality standards. On the contrary, American's Petition indicates clearly that its particulate emissions contribute to present violations of the national ambient air quality standards.

American's Amended Petition includes Agency figures for annual and 24-hour particulate readings at four locations near the Brach plant; those figures are taken from the Agency's 1973 Illinois air sampling network report. Of the four locations chosen by American as being affected by its emissions, three are in violation of the annual ambient air quality standards; two are in violation of the 24-hour standard.

American attempts to show that the contributions of the Brach plant to the readings at the four locations, (chosen by American), are small. However, while contributions from the Brach plant may be small on an absolute scale, and would not alone constitute a violation, they nonetheless comprise significant contributions to the violations which do exist. Based on these facts, we cannot grant a Variance here, under the test of Train v. NRDC, 43 U.S.L.W. 4467 (U.S., April 16, 1975). There can be no question, based on American's own figures, that it contributes to violations of the national ambient air quality standards.

It should also be noted that the Petitioner claimed that figures in the Agency's 1973 air quality report indicate a downward trend in particulate concentration in the area affected by Brach's emissions. While such a trend could not alone provide the basis for a grant of this Variance, we should also note that 1974 data from the Agency did not indicate such a trend. On the contrary, particulate concentration readings on both an annual and 24-hour basis at some of the sampling stations chosen by American indicate that particulate concentrations have actually increased.

As regards American's Petition for Variance from the operating permit requirement for its existing gas/oil-fired boiler, American has shown no hardship which would result if this Variance were not granted. American has, by its own admission, failed for several years to obtain the required permits, and does not in its Petition set out any acceptable reasons for that failure. The 1973 decision by American that it could not use steam from the city incinerator will not justify a Variance from the permit requirement in 1975.

Finally, American's Response to the Agency Recommendation cites a recent Illinois Institute of Technology Research Institute study to the effect that ". . . Chicago's stationary source emissions of particles seem to be well controlled, and contribute insignificant amounts to the filter catch. Chicago's TSP [total suspended particulates] problem is due solely [sic] to vehicular traffic . . ." IITRI Study C9914-C01 at p. 1. The inclusion of this study in the instant record will not support the grant of a Variance for two reasons: First, without supporting testimony, we do not feel that all the questions raised by the study are adequately answered, or that the broad conclusions reached in the study have been adequately supported; Second, the modeling and information previously submitted by Petitioner still indicate that, whatever the principal source of the violation, Petitioner makes a significant contribution to such violation of the national ambient air quality standards for particulates.

American is invited to resubmit a Petition for Variance for its E. J. Brach & Sons Division plant. Any such Petition, however, should more adequately address the issues raised in this Opinion.

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

Mr. Young abstains.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD THAT the Petition for Variance and Amended Petition for Variance in this matter are dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30<sup>th</sup> day of October, 1975 by a vote of 3-0.

  
\_\_\_\_\_  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board