

ILLINOIS POLLUTION CONTROL BOARD
November 6, 1975

BLAKESLEE-MIDWEST PRESTRESSED)	
CONCRETE COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 75-269
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

MR. ROGER E. WILLS, JR., appeared on behalf of Petitioner;
MR. WILLIAM A. ERDMAN, appeared on behalf of Respondent.

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

Petitioner filed a request for variance from Rule 203(b) of the Air Pollution Control Regulations (Air Rules) on July 14, 1975. On August 9, 1975 Petitioner filed an amended variance petition in response to a More Information Order entered on July 17, 1975. On September 25, 1975 the Environmental Protection Agency (Agency) filed a Recommendation to grant the variance. Petitioner filed a Response to the Agency's Recommendation on October 16, 1975. On August 28, 1975, we ordered that a hearing be held on the Amended Petition. No hearing was held. Petitioner filed a Motion to Cancel Without a Hearing on October 16, 1975. We grant this motion.

Petitioner operates a concrete casting plant located within the City of Rochelle in Ogle County, Illinois. Petitioner manufactures prestressed concrete items which are utilized in highway and commercial building construction. Petitioner operates a cement silo for approximately two hours per day, five days per week. Petitioner seeks the variance from the particulate standards as they would apply to emissions from the cement silo. Petitioner contends that it had reason to believe that the emissions from its cement silo complied with the Air Rules until its application for an operating permit was denied on June 4, 1975. Petitioner proposes to install and operate a baghouse to control particulate emissions from the cement silo. Originally Petitioner estimated that this facility would be installed no later than January 1, 1976. In the amended variance petition, Petitioner states that it will achieve compliance by November 1, 1975.

While recommending that the variance be granted, the Agency states that it "is inexcusable that Blakeslee applied for its operating permit approximately three years late". Based on this record, the Board must agree with the Agency. The purpose of the permit program is to discover environmental problems and arrive at a solution to them. Had Petitioner timely filed an operating permit the emission problem would have been discovered three years earlier. Petitioner contends that its failure to comply with the applicable rules was unfortunately overlooked as a result of ownership and management changes which occurred in July, 1972.

In response to the Board's More Information Order of July 17, 1975 requesting information on the ambient air quality in the area affected by Petitioner's emission and reasons for failure to comply with the applicable rules before the filing of the original petition, Petitioner did not file any specific ambient air quality data. Rather Petitioner alleged that it would not interfere with the attainment or maintenance of ambient air quality standards as Petitioner has received no more than two deliveries of cement per day and never operates the source of emissions for more than two hours per day. Petitioner further states that the emissions emitted during the two hours does not exceed the total allowable particulates assuming an eight hour operation at the allowable emission limits.

The Board finds that it is unable to grant the requested variance. A denial of a variance does not constitute an order to cease and desist from violations but is rather a denial of a shield from prosecution. The Board finds that any hardship in this case is self-imposed in that Petitioner should have applied for its permit some three years prior. Further, the Board finds that it is constrained by the Board's interpretation of the decision in Train v. NRDC 43 LW 4467 (April 15, 1975) to deny the variance as Petitioner has not met its burden of proving that the grant of this variance would fail to interfere with the attainment or maintenance of ambient air quality standards. Further, Petitioner's hardship, that if forced to immediately comply with the regulations it would have to cease operations, is technically moot as the date in which Petitioner states it will be in compliance has already passed and no enforcement case has been filed against Petitioner. When Petitioner has its baghouse in operation it is then free to reapply for an operating permit.

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

ORDER

The request for a variance from Rule 203(b) of the Air Pollution Control Regulations (Air Rules) is hereby denied without prejudice.

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 6th day of November, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board