

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1975

GREAT LAKES CARBON CORPORATION,)
 Petitioner,)
)
 v.) PCB 75-85
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

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

This Petition to Extend Variance was filed by Great Lakes Carbon Corporation (Great Lakes) on February 21, 1975. Great Lakes seeks to have extended a prior Variance from Section 9(a) of the Illinois Environmental Protection Act (Act), and Rules 203(b) and 203(f) of Chapter 2: Air Pollution of the Pollution Control Board (Board) Rules and Regulations. Ill. Rev. Stat., Ch. 111 1/2, Sec. 1009(a) (1974); PCB Regs., Ch. 2, Rules 203(b), 203(f). Petitioner's prior Variance, (for which one extension has already been granted), will expire on May 24, 1975; this further extension is sought until December 30, 1975.

Great Lakes operates a plant on the south side of Chicago at which it is engaged in the calcining of anthracite coal and petroleum coke. Its plant consists of four rotary calcining kilns, four rotary cooling drums, conveyors for the handling of raw calcined coal and coke, enclosed storage silos, and open storage piles of raw coal and coke. In its original Opinion concerning this facility, the Board found that particulate matter is emitted from the kiln stacks, cooler stacks, transfer points in the material handling process, and the open storage stacks of coal and coke. (The operating details of Petitioner's plant are more fully set out in our prior Opinions. EPA v. Great Lakes Carbon Corporation, Great Lakes Carbon Corporation v. EPA, PCB 72-48, 72-431, (consolidated), (May 24, 1973); Great Lakes Carbon Corporation v. EPA, PCB 74-75, (July 18, 1974). Insofar as Petitioner has incorporated by reference the records compiled in those prior cases, it would serve no purpose to reiterate those facts.)

The Environmental Protection Agency (Agency) originally filed an enforcement action against Great Lakes on February 9, 1972. That Complaint alleged violations of Sections 9(a) and 9(b) of the Act and Rule 33.111 of the old Rules and Regulations Governing the Control of Air Pollution promulgated by the Air Pollution Control Board-predecessor of this Board. Thereafter on November 1, 1972, Great Lakes filed a Petition for Variance from the Act and those Regulations relating to particulate emissions which governed the operation of its kilns, material handling systems and storage piles, and from the permit requirements under the Act and the Old Rules. Those cases were consolidated, and a decision was reached in the matter by the Board on May 24, 1973. PCB 72-48, 72-431, (consolidated), supra.

In reaching its decision in those matters, the Board approved a Stipulation and Proposal for Settlement which was submitted by Great Lakes and the Agency. That settlement envisioned a long-term compliance program which involved shutting down approximately one-half of Petitioner Great Lakes' capacity at the calcining plant, after which extensive backfitting was to have been undertaken to achieve compliance with the applicable particulate standards. It was estimated at the time that the backfitting of kiln #1, (of four), which provides 50% of Petitioner's capacity at the Chicago plant, would be completed within 16 months of the Board's action in that matter. At that time, kilns #2, #3, and #4 were to have been shut down, and possibly also backfitted, to achieve compliance. The Board in that Order noted the length of time which Petitioner's compliance program would require, and made specific provision for the possible extension of the Variance granted there. In PCB 74-75, the Board found that Great Lakes had made adequate progress on the compliance plan, and the Board therefore extended Petitioner's Variance until May 24, 1975.

Great Lakes now alleges that it has been unable to complete the construction of emission control equipment, as required for compliance under our prior Orders, due to circumstances beyond its control. Petitioner alleges that it has been unable to obtain delivery of vital components, steel, and baghouse and refractory items. Great Lakes alleges that delivery delays with certain items have compounded the problem, in that items on a short delivery schedule have had to be delayed to meet the schedules of the larger items. Petitioner now states that it will be able to obtain delivery of all necessary items and, should this further Variance extension be granted, achieve complete compliance with the applicable standards by December 30, 1975.

The Agency, in a Recommendation filed April 4, 1975, states that it is of the opinion that Petitioner's revised compliance schedule is reasonable. The Agency also feels that the delivery delays alleged in the instant petition were, "for the most part, beyond petitioner's control" (Rec. 2). The Agency notes that Great Lakes' facility is located in a heavy industrial area, near three steel mills and two grain elevators. Further, the Agency states, there are few residences in the area which might be affected by emissions from Petitioner's plant, and that it had received no objections to the extension of this variance.

The Board did, however receive one objection to the grant of such an extension from a private citizen. That objection, received by the Board from a Stephen R. Sturk on April 7, 1975, asks that the Variance not be granted due to the high levels of particulate loading present on the southeast side of Chicago, citing the Agency's "Air Quality Data" reports. Mr. Sturk's conclusion was that the Environmental Protection Agency itself has provided proof that the granting of a variance would adversely affect the entire population on the southeast side of Chicago. The facts alleged by Mr. Sturk are not properly in the record here, therefore the arguments presented in the objection stand somewhat weakened.

The Environmental Protection Act conditions the extension of previously granted Variances on a showing of progress toward compliance; both Petitioner and the Agency have demonstrated that such progress has in fact been achieved in the instant matter. That being the case, the Board would normally grant this extension. Since the filing of the Petition herein, however, the United States Supreme Court handed down its decision in the case of Train v. National Resources Defense Council, 43 U.S.L.W. 4467 (U.S., April 16, 1975).

As we interpret that case, we may not grant either a new Variance or an extension of an existing one, absent a showing that such a grant will not cause or contribute to a violation of the national ambient air quality standards. There has been no such showing in this case.

In the Petition in this case, Great Lakes states:

Petitioner submits that the effect on the public will continue to be minimal should the Board approve the proposed backfit schedule. The complete shut down of Petitioner's facilities would not alter existing contaminant levels in any measurable way because of the continued operation of many other neighborhood stationery sources.

Further, the Petitioner in this matter has expressly incorporated matters which were part of the record in the prior cases. Although the record in the present case, with the record compiled in our previous determinations with regard to this facility, would indicate that the emissions from Great Lakes calcining plant do not individually present a great hardship to the public, or to the public health, we are bound by the law as we see it in the Train case. We therefore will grant the instant variance for only two of the seven months requested. Without the showing mandated by the Train case, this Board is constrained to deny any air variance beyond July 31, 1975.

While the Board feels that in reaching this decision it is pursuing its proper course under the law, we feel that this situation is unfortunate. Petitioner here has apparently made a considerable good faith effort to achieve compliance. Great Lakes alleges that it has spent in excess of \$300,000 to date, and has firm contractual obligations presently outstanding in excess of \$1,600,000, all in its effort to achieve compliance by May 30, 1975. While it is not our desire to deprive Petitioner of a shield from enforcement during the last five months of a compliance effort extended due to circumstances beyond its control, we must do so. cf., King Seeley Co., Thermos Div., v. EPA, PCB 75-159 (April 24, 1975) (Interim Order of the Board).

Insofar as we are finding here that Petitioner has demonstrated the necessary progress, and shown the requisite hardship, we will extend its Variance for the period for which we may do so. In reaching our finding here, we do not withdraw our prior approval of Petitioner's compliance plan. The bond and conditions to which the prior variance and its extension were subject will remain in effect for the period of this further extension.

Should petitioner return to the Board, in a further Petition for Extension of Variance, with a showing as is required under Train, we would be disposed, for the reasons given above, to grant a shield from enforcement for the full period requested here, until December 30, 1975. We may not do so now, however.

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:

1. Petitioner Great Lakes Carbon Corporation is granted a Variance from Section 9(a) of the Environmental Protection Act and Rules 203(b) and 203(f) of Chapter Two: Air Pollution of the Board's Rules and Regulations for the period May 24, 1975 until July 31, 1975.
2. Petitioner Great Lakes Carbon Corporation shall arrange with the Environmental Protection Agency to maintain in effect the performance bond required under the Board's previous Orders with regards to this matter, PCB 72-48,431 (Consolidated), and 74-75. Said performance bond to be continued in force and extended for the period of time of this Variance extension.
3. The Variance granted here shall be subject to all terms and conditions required by this Board's prior Orders with regard to this matter.
4. Within 30 days of the adoption of this Order Petitioner shall execute and submit to the Illinois Environmental Protection Agency, Variance Section, 2200 Churchhill Road, Springfield, Illinois 62706, a Certificate of Acceptance, the form of which shall be as follows:

CERTIFICATION

I (We), _____, have read and fully understand the Order of the Illinois Pollution Control Board in PCB 75-85, Great Lakes Carbon Corporation v. EPA, and hereby accept the Variance granted by said Order, understanding that such acceptance renders all terms and conditions of said Order binding and enforceable.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order of the Board was adopted on the 22nd day of May, 1975 by a vote of 5 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board