

ILLINOIS POLLUTION CONTROL BOARD
May 29, 1975

STAG BREWERY,)
Petitioner,)
v.) PCB 75-27
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On February 10, 1975, the Stag Brewery, a Division of Carling Brewery Company, Inc., filed a Petition For Variance with the Illinois Pollution Control Board (Board). Petitioner requested a one-year variance from Rules 203(g)(1)(B) and 204(c)(1)(A) of the Air Pollution Regulations (Chapter Two). Rule 203(g)(1)(B) limits Stag Brewery's particulate emissions to 0.44 pound per million BTU's; Rule 204(c)(1)(A) limits SO₂ emissions to 1.8 pounds per million BTU's after May 30, 1975. The Brewery is located in the City of Belleville, Illinois.

At the Brewery, the two coal-fired boilers are used throughout the year to provide steam for the brewery process, to sanitize equipment, and to heat the buildings during the winter. There is virtually no emission control equipment on the boilers. Twelve thousand tons of coal are burned each year. This Illinois coal has been analyzed as follows:

Heat Content:	11,200 BTU's per pound
Sulfur Content:	3.0%
Ash Content:	8.8%

In 1969, boiler stack tests showed emission rates of 0.38 pound of particulate and 5.1 pounds of SO₂ per million BTU input. Although the Illinois Environmental Protection Agency (Agency), in its Recommendation, disputed the relevance of the 1969 data, it calculated the Brewery emissions as 0.26 pound of particulate and 5.09 pounds of SO₂ per million BTU input. Based on the Rule 203(g)(1)(B) standard, the Agency concluded that a variance was only required from the SO₂ limitation of 1.8 pounds per million BTU under Rule 204(c)(1)(A).

The Petitioner based its hardship on the present unavailability of fuel oil that would enable it to meet the requirements of Rule 204(c)(1)(A). A compliance plan submitted to the Agency over a year ago, which the Agency approved, showed conversion to oil. An oil supplier was sought out in the summer of 1974 and storage tanks were purchased in the fall (Ex. 3). However, a November 8, 1974, letter from the Federal Energy Administration indicated Petitioner could only obtain oil "when use of petroleum

products certified by the appropriate State air pollution control agency to be essential to meeting the Primary Ambient Air Quality Standard of the air quality region in which the plant is located (Ex. 4)." Petitioner requested Agency certification in December 1974 (Ex. 5). An answer to this letter has not yet been received.

Stag Brewery argued that other control methods were not available to Petitioner:

1. High Sulfur Coal Control Devices: Methods not yet proven.
2. Low Sulfur Coal: Not readily available and Petitioner does not have the capability to handle the large quantities required.
3. Electric Boilers: Operating costs would be extremely high.
4. Natural Gas: Not now available.
5. Low Sulfur Oil: Oil allotments are difficult to obtain because of the energy shortage.

The Agency filed its Recommendation on April 24, 1975. Included in the Agency information was a submission from Petitioner showing the annual costs of various fuels:

Illinois Coal Without Controls	\$419,500
Illinois Coal With Controls	\$537,500
Oil (Excluding \$300,000 Capital Expense)	\$489,000
Low Sulfur Coal	\$639,500

The Agency discussed the use of low sulfur coal: "Since the ash content of western coal is frequently significantly less than the coal stag Brewery now uses, it may be more logical to assume that using western coal will cause a lower particulate emission rate, not a higher particulate emission rate. Switching to low sulfur coal should be much more expedient than converting to oil firing since using low sulfur coal does not require any new equipment. Furthermore, since converting to the use of low sulfur coal would cause no additional capital expenditures and oil conversion necessitates a \$300,000 capital expenditure, switching to low sulfur coal does not seem to be a wholly unreasonable choice from an economic standpoint."

In discussing its lack of response to the Petitioner's request for certification in December, 1974, the Agency stated: "At this time it remains unclear what evidence the Federal Energy Administration requires in the form of a certification from this Agency before an exception will be granted to allow oil usage. From conversations with FEA representatives the Agency believes that, at the very least, the FEA will require proof that converting to oil usage is the only technologically practicable and economically feasible means of complying with the sulfur dioxide

standard. That burden of proof is similar to that required by the Board in the instant case, and it is a burden that has not yet been met by Stag Brewery."

The Agency recommended that the variance be denied because "The reasons why it has chosen that method [to convert its boilers to oil firing] remain somewhat unclear to the Agency. Stag Brewery should provide a more detailed explanation as to its reasons for rejecting the use of low sulfur coal. Without such an explanation the Agency cannot agree that the variance, as requested, should be granted."

On May 8, 1975, Stag Brewery waived the requirement of final Board action within 90 days as required by Section 38 of the Illinois Environmental Protection Act. On May 16, Petitioner filed additional information to support its variance request. Petitioner estimated its annual operating costs as follows:

Illinois Coal Without Controls	\$446,500
Oil (Excluding \$300,000 Capital Expense)	\$499,000
Low Sulfur Coal	\$666,500

These figures included maintenance costs not contained in the earlier submission to the Agency. Petitioner presented figures to show that it has been operating at a loss since July 1, 1973. Petitioner argued it would be an unreasonable hardship to require conversion to western coal because of its present economic condition. Stag Brewery stated further that if its continued uncontrolled use of Illinois coal was not acceptable, the economics of its situation justified that it be given a variance for one year while conversion to oil is made. Petitioner noted that its capital expenditure of \$300,000 for conversion to oil could be recovered in approximately two years based on the annual operating costs with low sulfur western coal.

We grant the variance until July 31, 1975. Economic reasonableness is only one of the factors that the Board must consider in granting a variance. Compliance with the law is the cost of doing business. However, here Petitioner's problem is acute and some good faith has been shown in attempting to develop a viable compliance plan. Since the shortages of fuel oil can be expected to continue (and costs can be expected to increase) other technically feasible methods to comply with Rule 204(c)(1)(A) of Chapter Two need to be explored further.

We are precluded under the facts of this case from deciding whether a variance is warranted beyond July 31, 1975. In Train v. Natural Resources Defense Council 43 LW 4467 (April 15, 1975) the United States Supreme Court held that states can grant variances from their Implementation Plans provided the primary ambient air quality standards are not violated. No evidence of the levels of SO₂ in the area have been submitted in this case. Lacking such information, we cannot grant variances beyond July 31, 1975.

A short variance is granted to enable the Petitioner to prepare a firm compliance plan and meet any requirements demanded under federal law.

ORDER

Stag Brewery is hereby granted a variance from Rule 204(c) (1) (A) of Chapter Two from May 31, 1975, to July 31, 1975, in order to continue to use its coal fired boilers for its brewing operations at its Belleville plant. Request for variance from Rule 203(g) (1) (B) is dismissed without prejudice because at this time no violation of the standard is occurring.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 29th day of May, 1975, by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board