

ILLINOIS POLLUTION CONTROL BOARD
January 29, 1976

INTERNATIONAL HARVESTER COMPANY,)
Petitioner,)
)
)
v.) PCB 75-349
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

Mr. Alan I. Becker appeared in behalf of Petitioner.
Mr. Roger C. Zehntner appeared in behalf of Respondent.

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

This matter comes before the Board upon Petition of International Harvester Company (Harvester) for review of the Illinois Environmental Protection Agency's (Agency) denial of Harvester's permit application for construction of a quench car fogging system at Harvester's Wisconsin Steel Division located in Chicago, Illinois. Hearing was held in this matter on October 30, 1975, and Harvester has filed a waiver of its right to a decision from the Board within 90 days under Section 40 of the Environmental Protection Act (Act).

In an earlier variance petition before the Board, PCB 74-277, Harvester requested, inter alia, variance from Rule 203(d)(6)(B)(i)(bb) for its coke manufacturing facility known as Battery #3, proposing to shut the facility down in mid 1977, and proposing to construct the aforementioned quench car water fogging system as an emission control device until such time as the Battery is taken off line. The Board in its Opinion and Order in PCB 74-277 dated June 6, 1975 (which Opinion and Order is hereby incorporated by reference as if fully set forth herein), granted the variance requested and approved the use of the quench car water fogging system as "a viable control technique, particularly in view of the fact that No. 3 Battery is scheduled for shutdown in mid 1977."

The Agency in rejecting the construction permit application contends it is restrained from issuing such permit by Rule 103(a)(5) of Chapter 2 of the Board's Rules and Regulations (Regulations) which

states, in pertinent part:

...No construction permit shall be granted unless the applicant submits proof to the Agency that: (A) the emission source of air pollution control equipment will be constructed or modified to operate so as not to cause a violation of the Act or of this Chapter....,

In the Agency's view the language of Rule 103(a)(5) indicates a prohibition against the issuance of a construction permit for pollution control equipment which does not achieve full compliance with applicable regulations. It is the Agency's opinion that Harvester must petition the Board for variance from the aforementioned Rule before the Agency could issue such a construction permit.

Harvester argues that the variance granted in PCB 74-277 together with the acceptance by the Board of the water fogging system is sufficient to allow the Agency to issue a construction permit for its proposed system. The Agency, on the other hand, finds itself in a position where it may be forced to acknowledge that the fogging system, once installed, would meet the requirements of Rule 203(d)(6)(B)(ii)(bb), due to the language in other regulations and prior Board Opinions.

It was the intention of the Board in PCB 74-277 that Harvester shut down the No. 3 Battery by mid 1977 and in the meanwhile control the coke oven emissions to whatever degree possible with the fogging system. It was also the intention of the Board that the fogging system be installed as quickly as possible so as to gain the maximum advantage of its limited life. The Board has in the past granted variance where an interim abatement facility was to be constructed and final compliance would result only upon this interim facility's connection with some other facility. An example of this is the immediate construction of a pretreatment plant for effluent which by itself will not result in compliance with effluent standards but which when later connected to a sanitary treatment plan results in compliance with such effluent standards. E.W. Kneip, Inc. v. EPA, PCB 75-171, 18 PCB 363 (1975). In Kneip, the Agency recommended variance be granted including the construction of a pretreatment plant with final compliance achieved by potential connection to a proposed municipal treatment plant. Here we have an interim system proposed to partially control emissions emitted under a Board variance, with final compliance being the total elimination of said emissions at a later date.

The Board holds that the Agency may not deny a construction permit where the sole basis for said denial is that the construction facility will not result in compliance with the very same regulation from which the applicant has received a variance and said variance proceeding contemplated the construction of said facility, which alone would not result in compliance but, ultimately, would result in zero discharge. The construction of the fogging system is part of an overall compliance plan whose object is the cessation of emissions by mid 1977. Neither the Agency nor Harvester may take the permitting process for this piece of equipment outside the context of the variance proceeding in PCB 74-277.

The Board finds that the Agency should have issued a construction permit for the fogging system in consideration of the Opinion and Order in PCB 74-277.

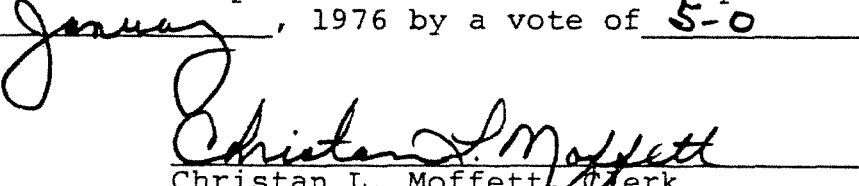
This Opinion constitutes the finding of fact and the conclusions of law of the Board.

ORDER

It is the Order of the Pollution Control Board that Harvester be issued a construction permit for a system known as a quench car water fogging system, consistent with the foregoing Opinion.

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 29th day of January, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board