

ILLINOIS POLLUTION CONTROL BOARD

March 26, 1975

EARLY AND DANIEL COMPANY, )  
Petitioner, )  
 )  
v. ) PCB 74-368  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
Respondent. )

Mr. Robert W. Thomson, attorney for Petitioner.  
Mr. William A. Erdman, attorney for Respondent.

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

On May 9, 1974, in Environmental Protection Agency v. Early and Daniel Company PCB 73-454, 12 PCB 237 (May 9, 1974), the Illinois Pollution Control Board (Board) ruled that Early and Daniel Company had violated Section 9(a) of the Illinois Environmental Protection Act (Act). In that Order, the Board gave Early and Daniel until October 1, 1974, to install equipment to control emissions from its truck dump and railroad load-out area at its grain elevator in Sheldon, Illinois. On September 30, 1974, Petitioner sought a variance from the October 1, 1974, Board deadline for installation of control equipment for the truck dump and railroad load-out area as set out in Orders 3(a) and 3(b) of the May 9, 1974, Opinion and Order. On October 10, the Illinois Environmental Protection Agency (Agency) filed a Motion To Dismiss because the Petition for Variance lacked necessary information. The Board, on October 17, ordered Petitioner to supply additional information on its variance request. On October 18, 1974, the Board received from Petitioner a Motion to Modify Order and supporting information which requested that the dates in subparagraphs 3(a) and 3(b) of our May 9, 1974, Order in PCB 73-454 be changed from "October 1, 1974" to "December 1, 1974, or such other dates as the Board shall deem appropriate." We considered this to be an amended petition for variance. Citizen complaints mandated the Board on December 5, 1974, to order that a hearing be held. Petitioner's motions to dispose of the Petition for Variance without hearing were denied on January 3, 1975.

The hearing was held on January 29, 1975, in Watseka, Illinois. Final Board action was later waived until April 15, 1975. The testimony established that delays in installing the equipment to control emissions from the truck dump and load-out area were beyond the control of Petitioner (R.82). Supplier's delivery of improperly fabricated equipment delayed installation (R.90). The control equipment was completely installed by December 15, 1974 (R. 39, 63, 82, 104). Three citizen witnesses

testified and stated that although they were still bothered by emissions, the situation had improved from what it was a year ago (R. 18 to 31). To show good faith, Petitioner established that equipment required to be installed by October 1, 1975, was installed by December 15, 1974 (R. 83). Good housekeeping practices are being observed at the facility (R. 57).

The Agency filed an Agency Summation on March 11, 1975, and recommended that the variance be granted from October 1 to December 15, 1974.

We grant the variance. Petitioner has made good faith efforts to achieve compliance and the delay in the installation of control equipment was not self-imposed. Based on the facts of this case, to deny the variance would impose an unreasonable hardship on the Petitioner.

ORDER

A Variance is hereby granted to the Early and Daniel Company for the period of October 1, 1974, until December 15, 1974, from the provisions of subparagraphs 3(a) and 3(b) of the Board Order of May 9, 1974, in PCB 73-454.

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 26<sup>th</sup> day of August, 1975, by a vote of 7 to 0.

  
Christan L. Moffett