

ILLINOIS POLLUTION CONTROL BOARD

October 24, 1974

CON AGRA, INC.)
 Petitioner,)
))
 v.) PCB 74-311
))
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

Mr. Thomas J. Immel, attorney for Petitioner.
Mr. Roger Zehntner, attorney for Respondent.

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

On August 22, 1974, Con Agra, Inc. filed with the Pollution Control Board (Board) a Petition For Variance from Rule 203(b) of the Air Pollution Regulations (Chapter Two). Petitioner sought a six-month variance for emissions resulting from the operation of a hammermill at its flour mill in Chester, Illinois. Petitioner has headquarters in Omaha, Nebraska; it purchased the Chester, Illinois facility in January, 1972. The plant processes wheat into flour and pulverizes with a hammermill the remaining by-product chaff and unusable shrivelled wheat into pellets for cattle feed. The grinding action of the hammermill creates large volumes of air and entrains significant quantities of particulate matter. This air is vented through two 1946 cyclones into a common stack and out into the atmosphere. Petitioner estimated that total emissions from the hammermill -- which processes 600 lbs/hour of by-product -- were 2.6 lbs/hour (Exhibit "C"). Rule 203(b) limits emissions to 1.83 lbs/hour. Petitioner stated, that the hammermill is the only equipment that can successfully accomplish the pulverizing process.

To achieve compliance, Con Agra, Inc. intends to install a Buhler model ASF-24 air shock stocking filter costing \$10,500.00. Petitioner estimates that emissions from the filter will be zero; the equipment has already been ordered. However, application has not yet been made for a construction permit from the Environmental Protection Agency (Agency). In fact, Petitioner did not apply for an operating permit for its wheat cleaning house until sometime in early 1974, although Rule 103(b)(2)(A) requires Petitioner to have had a permit for its milling operations by January 1, 1973. The fact that the permit for the hammermill operation was denied in 1974 is the reason that a variance is now necessary. Petitioner has an annual payroll of \$800,000.00 and more than 50 full-time employees. Con Agra, Inc. stated that neighbors had not complained about emissions caused by the operation of the facility.

The Agency filed its Recommendation on October 1, 1974. It disapproved of the method in which Petitioner calculated its emissions and found the total particulate emission rate to be 5.22 lbs/hour. The Agency argued that since Con Agra, Inc. had failed to comply with Rule 203(b) on April 14, 1972, that under Rule 203(c), it must meet the requirements of Rule 203(a) of Chapter Two. Rule 203(a) limits emissions to 1.35 lbs/hour. We agree with the Agency. Rule 203(a) is applicable to this Petitioner because it neither met the Rule 203(b) standard on the effective date of the Rule (April 14, 1972), nor satisfied both of the conditions set out in Rule 203(c) (1) and (2) of Chapter Two.

The Agency estimated that the Buhler model ASF-24 air shock stocking filter would reduce emissions to .01 lb/hour. While acknowledging the effectiveness of this program of compliance, the Agency recommended that the variance be denied because:

" 11) In light of Petitioner's failure to obtain an operating permit (for its facility) by February 1, 1973, (sic) as required by the Pollution Control Board Regulations, and the failure to seek either an operating permit or Variance during the course of the next year, the Agency does not view the Petitioner's Variance request with favor. By its dilatory actions, Petitioner chose to run the risk of enforcement and has openly admitted continuing violation. The Agency will not now approve of such lack of diligence by recommending that Petitioner's Variance request be granted.

" 12) Moreover, the Agency emphasizes the fact that Petitioner did not apply for a construction permit prior to the decision to order its proposed control device. The Agency agrees that the device, in all probability, will work successfully so as to meet the Regulations. Probability of success, however, does not relieve the Petitioner from its duty to obtain the requisite permits. The construction permit procedure is designed to insure compliance, particularly before an applicant becomes detrimentally bound to a specific control program. The procedure is dependent upon good faith companies respecting the function and validity of such procedure. Entering into binding contracts for proposed control equipment prior to receipt of Agency approval (as evidenced by a valid construction permit) does not indicate such respect. If the permit system is to succeed (or pollution control generally), a company such as Petitioner's must not be allowed to comply in its unbridled discretion or its own due time."

On October 4, 1974, the Petitioner responded to the recommendation of the Agency. In pertinent part, Petitioner declared it had not been dilatory in complying with the law, because, being an out-of-state company, it had taken time for it to become familiar with the environmental laws of Illinois. Second, Petitioner admitted that control equipment had been ordered September 4, 1974, without a construction permit; it argued that these efforts were made in good faith to facilitate early compliance in the face of expected delivery delays. Furthermore, Petitioner remarked that the regulations only require that control equipment be installed after receiving a construction permit. "Whether such equipment is purchased, wisely or unwisely, is exclusively the concern (and the risk) of the purchaser" (page 4). After filing its Petition, Petitioner learned that "five months would be required for delivery of all component parts of the control equipment" (page 3) instead of 60 days as had been estimated in the August 22, 1974, Petition for Variance.

On October 18, 1974, the Agency answered the Petitioner's response and reiterated its position that the Variance be denied.

We grant the Variance. While ignorance of the law does not excuse delayed compliance, the granting of this Variance will not preclude an Agency enforcement action for those earlier periods when the Petitioner was allegedly in violation of the Environmental Protection Act and the regulations. Second, Con Agra, Inc. has demonstrated good faith in its recent efforts to abate the pollution problem. While we understand the Agency's policy of requiring permits before purchase, Petitioner deserves some credit for its efforts -- and the self-imposed financial risk -- to expedite equipment installation. Finally, it does not appear that significant environmental harm will result from the grant of this Variance. While we are reluctant to grant a variance without data on the environmental impact created by the pollution source, the low emission rates and the short term nature of the excessive emissions convince us that it would be an arbitrary and unreasonable hardship to deny the Petitioner this reprieve from Rule 203(a) of Chapter Two.

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

ORDER

1. Con Agra, Inc. is hereby granted a Variance from Rule 203 (a) of Chapter Two from August 22, 1974, until March 22, 1975, or such earlier date that it can install a Buhler model ASF-24 air shock stocking filter to control particulate emissions caused by the operation of a hammermill at its facility.

2. Petitioner shall apply for all necessary permits from the Agency.

3. Petitioner shall submit to the Agency written progress compliance reports on January 22 and March 22, 1975, or such earlier date that it can install the air pollution control equipment specified in Order 1, above.

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 24th day of October, 1974, by a vote of 5 to 0.


Christan L. Moffett