ILLINOIS POLLUTION CONTROL BOARD May 8, 1975

JOSLYN MFG. AND SUPPLY COMPANY,) Petitioner,)
v.	PCB 74-427
ENVIRONMENTAL PROTECTION AGENCY, Respondent.)

ORDER OF THE BOARD (by Dr. Odell)

On February 14, 1975, in Joslyn Mfg. and Supply Company v. Environmental Protection Agency PCB 74-427, PCB

(February 14, 1975), the Illinois Pollution Control Board (Board) granted Petitioner a variance from November 14, 1974, until June 30, 1975, from Rule 203(a) of the Air Pollution Regulations. This Rule became effective December 31, 1973. The Board refused to grant the variance for a full year as requested by Petitioner because "Petitioner did not submit any evidence to justify this delay of almost one year before requesting the variance or seeking to achieve compliance." On March 12, 1975, Petitioner moved that the Board amend its Order to grant the variance until November 19, 1975. To support its position, Joslyn Mfg. and Supply Company filed supplemental information with its March 12 request and also on March 21, 1975.

The additional information reveals that at a meeting on November 26, 1973, between the Petitioner and the Illinois Environmental Protection Agency (Agency) the possible need for control equipment at Petitioner's facilities was discussed. Petitioner agreed to undertake tests for particulates to see whether controls for its emissions were necessary. Coincident with this meeting was the November decision by Joslyn Mfg. and Supply Company to expand its facilities to meet 1974 demands. It was decided at this time to seek approval to install pollution control equipment for the present and proposed equipment. April 1974, the Board of Directors approved expenditures of \$200,000 to cover the total cost of such equipment. Although Petitioner believed in the fall of 1974 that its uncontrolled emissions from existing equipment complied with applicable limitations, it decided to apply for a variance after receiving an Agency letter in October 1974. Apparently the tests discussed with the Agency in November 1973 were never conducted.

The additional information indicated that control equipment was ordered on February 28, 1975. Petitioner estimated the time necessary for installment to be as follows:

- "8 weeks to prepare general arrangement drawings.
 - 2 weeks to check and approve drawings.
- 12 weeks for fabrication and delivery.
- 8 weeks for erection of equipment.
- 4 weeks for shakedown and start up.
- 34 weeks total"

Petitioner stated that "using the week of March 3 as the first week this would give us an on-stream schedule the week of October 27, 1975."

We grant the motion to the extent that we shall extend the grant of the variance from June 30, 1975, through July 31, 1975. Until April 15, 1975, the submitted data would have allowed the Board to decide whether a longer extension of the variance should be granted. However, on that date, the United States Supreme Court announced its decision in Train v. Natural Resources Defense Council 43 LW 4467 (April 15, 1975). In that Opinion the Court ruled that states can grant variances from their Implementation Plans provided that national primary ambient air quality standards are not violated. Pursuant to Section 110(a) of the Amended Clean Air Act of 1970, 42 U.S.C. Section 1857c-5(a)(3), data must be brought forth to establish compliance with the applicable standards. No such data have been submitted; therefore, the Board cannot extend this variance beyond July 31, 1975.

ORDER

The Board's Order of February 15, 1975, is amended, in pertinent part, to read " . . . Joslyn Manufacturing and Supply Company is granted a variance from Rule 203(a) of the Air Pollution Regulations from November 14, 1974, to and including July 31, 1975, . . . " The four conditions to the grant of that variance shall remain in full force and effect.

IT IS SO ORDERED.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the day of May, 1975, by a vote of

Christan L. Moffett Clerk
Illinois Pollution Control Board