

ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

TEXACO, INC.)
)
) Petitioner,)
)
) vs.) PCB 75-59
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

Texaco, Inc. seeks variance from Section 9(a) (air pollution) and Section 9(b) (permits) of the Environmental Protection Act and Rules 102 (air pollution), 103(b)(2) (permits), 104(a) (compliance programs) and 205(j)(2) (compliance dates) of the Air Pollution Control Regulations. In addition, Texaco requests extension of a variance which had previously been granted from Rule 205(a) (storage of organic material). In PCB 73-54 the Board allowed variance from Rule 205(a) during installation of control equipment on 31 volatile organic storage tanks.

Petitioner owns and operates a petroleum refinery contiguous to the City of Lockport in Will County. Stationary storage tanks are used to store volatile organic materials. Texaco is equipping its storage tanks with floating roofs pursuant to a compliance schedule which was approved in PCB 73-54. By operating its refinery with reduced storage capacities, Texaco has been able to accelerate its installation schedule. As the project now stands, only five storage tanks will not be in compliance with the Regulations by December 31, 1975. These five will all be in compliance by September 1, 1976. Petitioner therefore requests a one year variance, the maximum allowable under State law.

On April 16, 1975, after this matter had been submitted to us for decision, the U. S. Supreme Court handed down its opinion in Train, Administrator Environmental Protection Agency, et al vs. Natural Resources Defense Council (No. 73-1742). In brief, the U. S. Supreme Court ruled that the Clean Air Act authorizes states to grant variances from implementation plan requirements if such variances do not interfere with attainment or maintenance of

national ambient air quality standards. The Court said:

"The Act gives the Agency no authority to question the wisdom of a state's choices of emission limitations if they are part of a plan which satisfies the standards of Section 110(a)(2), and the Agency may devise and promulgate a specific plan of its own only if a state fails to submit an implementation plan which satisfies those standards. Sec. 110(c). Thus, so long as the ultimate effect of a state's choice of emission limitations is compliance with the national standards for ambient air, the state is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation".

The Court's ruling technically upholds only the specific Georgia provision at issue, which would permit the State of Georgia to grant such variances before July 1, 1975, the date Georgia is required to attain the ambient air standards. However the Supreme Court said:

"The Agency is candid in admitting that should we base our decision on its interpretation of Section 110(a)(3), the decision would support the approval of implementation plans which provide for variances effective after the attainment date."

Illinois is required to attain the ambient air standards by July 31, 1975, but the Illinois Implementation Plan provides for the grant of variances in accordance with the provisions of the Illinois Environmental Protection Act. Therefore, this Board can grant individual variances beyond July 31, 1975 if the variances do not interfere with the attainment and subsequent maintenance of national ambient air quality standards.

The record in the instant case is not sufficient for the allowance of Texaco's variance petition. There are no data bearing on the quality of the ambient air which is affected by Petitioner's emissions; there is no statement or testimony in the record indicating whether the grant of the variances would interfere with attainment or maintenance of national ambient air quality standards. Therefore, the Board must dismiss the petition without prejudice.

If Texaco chooses to submit a new petition for variance such petition must address the air quality issue as the Board will be interested in determining whether the variance is allowable under the recent U. S. Supreme Court decision.

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

ORDER

It is ordered that the variance petition of Texaco, Inc. be dismissed without prejudice.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of May, 1975 by a vote of 5-0.


Christian L. Moffett, Clerk
Illinois Pollution Control Board