

The Order in PCB 73-185 was issued by the Board on October 4, 1973. That was a full 18 months before Rule 204 (e) was to go into effect. It is long-established case law that the granting of a variance presupposes a continuing violation of the law. Swords v. Environmental Protection Agency, PCB 70-6, 1 PCB Opinions 7. A variance will not be granted from a rule or regulation which Petitioner is not violating. Environmental Protection Agency v. Borden Chemical Co., PCB 71-23, 1 PCB Opinions 608; City of Carbondale v. Environmental Protection Agency, PCB 73-430, 10 PCB Opinions 543. After the Board handed down its Opinion and Order in PCB 73-185, the Board issued its Order in Central Illinois Light Co. v. Environmental Protection Agency, PCB 73-63, 11 PCB Opinions 427. In that case, CILCO asked for a variance from Rule 204. The Board denied the variance. There was no violation of an existing rule. Furthermore, Rule 204 was not to go into effect until more than one year after the variance would have been granted. The Board determined that it could not grant variances from rules that do not come into effect until more than one year after the variance order is issued.

The similarities between 73-185 and the CILCO case lead the Board to the conclusion that 73-185 was granted in error. It was an empty variance that did not give Petitioner any relief.

Notwithstanding the above, operating permits were granted to CIPS by the Agency upon reliance on the Board Order in 73-185, and therefore such permits shall be given full force and effect for the period of said Order. Permits to operate the Meredosia Station were issued pursuant to the variance granted in PCB 73-185 (Agency Recommendation Pg. 2).

As was noted in the CILCO case (supra.), Petitioner should have sought relief from the parts of Chapter 2 (Air Regulations) which were forcing the Agency to deny its permit applications. These Rules are Rule 103 (b) (6) (A) and (E) and Rule 104.

The Board cannot grant an extension to the variance granted in PCB 73-185. Therefore, it is necessary to make a complete determination based on the record in this case.

Variance from Rule 204 (e) is now available to Petitioner. Petitioner must prove that application of Rule 204 (e) will bring about an arbitrary and unreasonable hardship to Petitioner. Chap. 111 1/2 I.R.S. Sec. 1035.

Petitioner's major allegation in these matters is that even though they will be in violation of the emission limitations of Rule 204 (e), the plant does not cause a violation of the National Primary Ambient Air Quality Standards, and therefore the intent of the section is being met. While it is true that the emission limitations of Chapter 2 were designed to meet the National Ambient Air Quality Standards, they are also enforceable on their face by both the State of Illinois and the Federal Government.

The monitoring program ordered does not seem adequate to guarantee that the ambient standards would continually be met. A much more sophisticated monitoring system, consisting of emission monitors, ambient

air monitoring, and weather monitoring, along with a plan to reduce emissions if the ambient air standards are approached, is necessary to guarantee compliance with the Ambient Air Quality Standards. This would be an interim measure, until Petitioner could develop a compliance plan for meeting the emission limitations.

In the record of this case, Petitioner makes no attempt at showing a plan that will bring its plant into compliance at any time. The purpose of a variance is not to permit an arbitrary and continuous violation of the law, but is rather to grant a period of time during which the Petitioner can take reasonable steps to bring his operation into compliance with the law. Swords v. Environmental Protection Agency, PCB 70-6, 1 PCB Opinions 8. The Board does not favor the granting of variances without some definite assurances the emissions will be controlled by available pollution control devices as soon as possible. Mount Carmel Public Utility Co. v. Environmental Protection Agency, PCB 71-13, 1 PCB Opinions 403. The essence of a variance is a firm and adequate program for achieving compliance with the regulations in the shortest practical time. Metropolitan Sanitary District of Chicago v. Environmental Protection Agency, PCB 71-183, 3 PCB Opinions 57.

If a compliance plan cannot be drawn because there is a lack of available technology, a research program to develop a method of solving the problem can be considered a possible compliance plan. Sherwin Williams v. Environmental Protection Agency, PCB 71-111, 3 PCB Opinions 37; Union Oil Co. v. Environmental Protection Agency, PCB 72-477, 7 PCB Opinions 219; Koppers Co., Inc., v. Environmental Protection Agency, PCB 73-363, 10 PCB Opinions 251; Mobil Oil Corp. v. Environmental Protection Agency, PCB 73-432, 13 PCB Opinions 179.

This record shows no evidence of any attempt by Petitioner to develop a plan to bring its plant into compliance now or ever. Therefore, the Board cannot grant variance from Rule 204 (e) based on this record.

Whether the plant meets the goal of Rule 204 (e) without complying with its limits is not germane to a variance proceeding. It assumes that the only reason for Rule 204 (e) is to meet the ambient standards, yet no evidence is in the record on that point. A regulatory action before the Board may be the better forum for Petitioner to raise this argument. Environmental impact is just a factor to be considered in variance cases.

Petitioner has not had all its remedies foreclosed by denial of the variance. It can come back to the Board with a subsequent variance petition requesting relief from Rule 204 (e), meeting the requirements of Rule 401 of Chapter 1 of the Board's Rules and Regulations, and containing an adequate compliance plan for meeting the regulations as discussed above. Petitioner can also come to the Board for variance from either the operating permit requirement of Rule 103 (b)(6)(A) and (E) or the requirement of a compliance plan from Rule 104, in order to get a permit until May 30, 1975. Petitioner can lastly come to the Board with a change in the regulation, if it feels that Rule 204(e) is more stringent than necessary to meet the requirements of the National Primary and Secondary Ambient Air Quality Standards.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that the variance extension requested by CIPS from Rule 204 (e), Chapter 2, Air Pollution Regulations, until October 3, 1975, is denied without prejudice.

Mr. Henss dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 22nd day of November, 1974, by a vote of 3 to 1.


