

ILLINOIS POLLUTION CONTROL BOARD

December 5, 1974

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

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

INTERIM ORDER OF THE BOARD (by Dr. Odell)

Petitioner owns and operates certain facilities, including a grain elevator and associated equipment located at 300 South Fourth Street, Sheldon, Illinois.

On September 30 and October 9, 1974, the Illinois Pollution Control Board (Board) received letters from Petitioner requesting "an extension of time for compliance with those portions of the Board's Order (Environmental Protection Agency v. Early and Daniel Company, PCB 73-454, 12 PCB 237, May 9, 1974) that are affected by" unavoidable delays in getting materials from their suppliers.

On October 10, 1974, the Environmental Protection Agency (Agency) filed a Motion to Dismiss the variance request, because Petitioner had failed to supply sufficient information to enable the Agency to decide whether the variance should be granted.

In an Interim Order of October 17, 1974, the Board asked Petitioner to amend its Petition for Variance within 35 days and provide the kind of information required in the Board's Procedural Rule 401. This Order also specified that the 90-day requirement for final action under Section 38 of the Environmental Protection Act (Act) would begin to run from the filing date of the Amended Petition.

On October 18, 1974, the Board received from Petitioner a Response to Motion to Dismiss and Motion to Modify Order, the latter of which is interpreted as an Amended Petition for Variance. Petitioner seeks a variance from that part of sub-paragraphs 3(a) and 3(b) of the Board's Order in EPA v. Early and Daniel Company, PCB 73-454, May 9, 1974, regarding compliance dates with Section 9(a) of the Act. Specifically, Petitioner seeks an extension in the compliance dates in these sub-paragraphs 3(a) and 3(b) from October 1, 1974, to December 1, 1974. Petitioner submitted evidence indicating that equipment and material deliveries had been unavoidably delayed and that this contingency had been mentioned during

the hearing and in the Board's Opinion and Order for PCB 73-454.

A Recommendation was received from the Agency on November 25, 1974, which was based in part on their inspection of Petitioner's facilities on October 7, 1974. The Agency reported the status of compliance with various May 9, 1974, Board Orders. The Agency noted that the Petitioner had failed to submit an engineering study and final drawings to control emissions from the drying area as required in the Board's Order of May 9, 1974. The Agency stated that complaints had been received from citizens living near the Early and Daniel facilities concerning "excess emissions from the 'cyclone bins' and the dumping area, and they have objected to the granting of this variance." The Agency believed that these objections compelled the scheduling of a hearing.

On October 5 and 11, 1974, citizens filed written objections to the grant of this variance. Therefore, we believe a hearing is necessary under provisions in Section 37 of the Act. The citizens specifically complained about excessive emissions "from the cyclone bins as well as the 4th Street dump."

Because of the 90-day requirement for final action under Section 38 of the Act, a waiver is requested from the Petitioner. The waiver should cover the period from the time of the expiration of the 90 days to the hearing date (if held after January 15, 1975) and additionally, for 45 days after the completion of the hearing(s). This 45-day period is necessary to enable the Board to examine the record and formulate its order. Failure to make the necessary waivers will necessitate dismissing the Petition for lack of information.

ORDER

IT IS THE ORDER of the Pollution Control Board that a hearing shall be held to obtain pertinent information on:

- (i) Basis for citizen complaints to the granting of this variance.
- (ii) Any facts, in addition to those submitted to date, relating to Petitioner's request for an extension from October 1 to December 1, 1974, as compliance dates in sub-paragraphs 3(a) and 3(b) of the Board's Order of May 9, 1974, in PCB 73-454. Of particular interest are reasons for failure of Petitioner to timely file the results of the engineering study and final drawings for equipment to control emissions from the drying of grain, as specified in sub-paragraphs 3(c) and 3(d) of the Board's Order of May 9, 1974, in PCB 73-454.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of December, 1974, by a vote of 5 to 3.


Christan L. Moffett