

ILLINOIS POLLUTION CONTROL BOARD
February 27, 1975

ACME BARREL COMPANY, INC.)
)
 Petitioner)
)
 v.) PCB 74-454
)
ENVIRONMENTAL PROTECTION)
AGENCY)
 Respondent)

OPINION & ORDER of the Board (by Mr. Zeitlin)

The Petition for Variance in this matter was filed by Acme Barrel Company, Inc. (Acme) on December 4, 1974. In its Petition Acme requests an extension of a previous variance expiring on November 1, 1974. That variance, granted on July 25, 1974, was from the requirements of an even earlier Pollution Control Board Order dated December 13, 1973.

BACKGROUND

The operation of Acme's Barrel reclamation plant in Chicago has been adequately described in two previous Board Opinions EPA v. Acme Barrel Company, PCB 72-404, December 13, 1973, 10 PCB 301; Acme Barrel Company v. Environmental Protection Agency, PCB 74-138, July 25, 1974; 13 PCB 207. This matter originally came before the Board in an enforcement action filed by the Agency on October 13, 1972. In that complaint the Agency alleged that Acme caused and allowed the burning of refuse in pits in front of Acme's incinerator in violation of the Environmental Protection Act. That complaint also alleged that Acme caused air pollution by the operation of its salamanders, barrel preheating process, and its waste material collection. The hearing testimony and stipulated facts in that matter, as detailed in the Board's Opinion, showed various violations and nuisances caused by Acme. 10 PCB at 302.

The Board Order in the original enforcement action adopted an agreement of the parties which covered the elimination of several emission problems at the Acme plant. Acme was ordered to have operating a system for drum cleaning by May 1, 1974, and to continue vigorously pursuing investigations and implementation of alternatives regarding disposal of drum drainings generated at the plant. Acme was also to maintain a high degree of maintenance in its paint booth filters and on its shop baghouse. Acme was also ordered to pay a \$1,000 penalty at that time.

On April 17, 1974 Acme filed a Petition for Variance from the terms of the Board Order in PCB 72-404. Petitioner at that time stated that due to conditions in the business community it was unable to acquire the equipment or materials necessary to achieve compliance with the Board's Order in PCB 72-404, as to the drum cleaning and draining system, scheduled for completion on May 1, 1974 under the original plan. On the basis of problems which it incurred in acquiring the necessary steel and other equipment, Acme asked an extension of six months during which time it would fabricate the necessary equipment and materials. The Board's Opinion in that case pointed out that Petitioner had begun a program of compliance in accord with the earlier Order, and was apparently complying with that earlier Order in several ways, 13 PCB at 208. It also appeared to the Board at that time that Petitioner had already purchased much of the necessary equipment, including conveyor, gear box, chain and pumps.

The Agency at that time recommended that the variance be granted, and felt that six months would be sufficient time to complete the system. The Board granted Acme a variance until November 1, 1974 from the provisions of the original Order relating to the drum cleaning and draining system.

The instant petition was filed on December 4, 1974, thirty-four days subsequent to the expiration of the previous variance. Acme now claims that its inability to get many of the needed components for the original system with which it was to achieve compliance has required a complete revamping of its compliance plan. These problems, Acme claims, have put the company several months behind schedule in achieving compliance. Acme claims that it has expended every effort during the period of the original variance to control the possibilities of open burning and the resultant emission of pollutants. The company now feels that an extension of its variance until March 1, 1975 will give it sufficient time to complete the necessary drum draining equipment, start up, and debug it to achieve compliance.

The Agency in its recommendation has pointed out that Acme has in fact complied with many requirements of the Board's original Order. A new baghouse has been installed, under Agency permit, to control emissions from a shotblasting unit. Acme has also constructed a concrete pit as part of the drum draining system. The Agency does not, however, recommend a grant to this variance extension. The Agency, based on a December, 1974 inspection, feels that Acme is not fully complying with several provisions of the Board's original Order of December 13, 1973. The Agency alleged that incinerator overloading by Acme is leading to continued emission problems, and that Acme's progress towards completion of the barrel draining line is much slower than could

reasonably be expected. The Agency inspector felt that the concrete pit installed by Acme could have been constructed in one week, and the Agency points out that a new conveyor line installed by Acme does not even run past a proposed drum drainage line. Further, the Agency feels that Acme is not achieving the high degree of maintenance in other sections of its operation, as required under the original Board Order. Specifically, the Agency points out that the filter pads on Acme's spray booths are either missing or are clogged with paint. Whether this constitutes a showing of bad faith, as alleged by the Agency, it is not clear however. In the instant variance petition Acme claims that reformulation of its paint solvents has solved any emission problems resultant from these spray booths. The Board has no way of knowing whether a continued emission problem exists at the spray booths as currently operated.

PRESENT CONSIDERATIONS

Section 35 of the Act impowers the Board to grant individual variances when it finds that compliance, if required immediately, would impose an unreasonable hardship upon the Petitioner. Although as the Agency points out, Acme has not in this Petition shown any new or overriding hardship dictating the grant in this variance, the Board takes notice of the fact that this petition is requested for a short period of time, and that it is couched in terms of an extension rather than a new variance. The period requested in this variance is only four months, which if Petitioner's allegations are taken as true, is not an unreasonable period of time. Further it can be assumed in this situation that those hardships found in the prior variance grant still obtain and still provide a basis for this variance grant. Those hardships, based primarily on the availability of materials, probably still exist, as is alleged by Petitioner.

As is pointed out by the Agency, however, Petitioner has not in the instant case shown with specificity that such hardships and shortages still exist. While we are willing for this short period of time to accept Acme's general allegations that the hardships still exist, we would not be so disposed in future extension petitions.

Further, Acme's allegations of material unavailability begin to strain at the limits of credibility. The drum draining and cleaning operations, which are the subject of this variance petition, have been before the Board almost continuously since the Agency filed its original enforcement action in 1972. The conditions leading up to that action are still not fully abated. While the original Order of the Board was not filed until December of 1973, we feel that the grant of this additional extension should provide more than ample time for Petitioner to complete his plan of compliance. It is expected that at the close of the currently granted variance period, on March 1, 1975, the Agency will closely inspect the degree to which Acme has completed its compliance efforts.

Petitioner will, upon the issuance of this Order, have been given a total of ten months extension past its initial deadline of May 1, 1974. It is the Opinion of the Board that such a ten-month period, in addition to the period granted by the Board in its original Order, constitutes a reasonable period for Acme to achieve compliance in light of the exigent circumstances pleaded in its variance petitions. This grant cannot be seen as merely one of a series granting Acme an indefinite period to achieve compliance. While the Board feels that ten months additional may be required for compliance, it does not at the present time feel that a longer time will be warranted on the basis of facts currently pleaded. Although the Board has accepted the hardships previously pleaded as continuing, such hardships cannot be inferred to be of indefinite nature or duration. Acme will be expected to, in its own words, "in the course of the extended variance... continue...continue to bend every effort to be certain" that compliance is achieved.

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 Petitioner Acme Barrel Company, Inc. is granted a variance from November 1, 1974 to March 1, 1975, from the provisions of paragraph 1 in the Board's Order of December 13, 1973 in the Case of EPA v. Acme Barrel Company PCB 72-404, 10 PCB 301.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion & Order were adopted on the 27th day of February, 1975 by a vote of 3 to 1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board