ILLINOIS POLLUTION CONTROL BOARD March 7, 1974

ILLINOIS POWE	R COMPANY	(WOOD	RIVER))	
v.))	PCB 73-483
ENVIRONMENTAL	PROTECTIO	ON AGE	NCY	í	

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On November 14, 1973, Illinois Power Company (IP) filed with the Illinois Pollution Control Board (Board) a petition for variance from Rule 408 (suspended and total dissolved solids) of Chapter 3: Water Pollution Regulations, from January 1 through June 30, 1974. Petitioner alleged suppliers' delays in shipment of material and equipment as the impediment to their compliance by December 31, 1973. The Board's interim Order of January 10. 1974, gave IP 21 days to supply necessary information to enable the Board to make a proper decision. The Board also requested a waiver of 30 days to the 90-day requirement specified in Section 38 of the Illinois Environmental Protection Act. Petitioner submitted additional information on February 19, 1974. A 30-day waiver was received on January 16, 1974. On February 15, 1974, the Environmental Protection Agency (EPA) filed its Recommendation.

Petitioner currently owns and operates a coal-fired electric power generating station, known as the Wood River Station, near the town of East Alton, Madison County, Illinois. In April, 1972, Petitioner contacted consulting engineers to determine what steps would be necessary to comply with the newly adopted Water Pollution Regulations which stated that compliance with Rule 408 had to be achieved by December 31, 1973. By July, 1972, it was decided that repiping and sump pumps would have to be installed in order to direct effluents to an ash lagoon for final treatment, thereby satisfying Rule 408 (suspended and total dissolved solids). Petitioner decided at that time to incorporate these ideas into its EPA permit application. However, Petitioner did not apply for its permit until May, 1973; permits were issued by the EPA in August, 1973. IP ordered pumps in June, 1973, and awarded the piping contract in mid-August, 1973. A manufacturer's strike delayed the pipe shipment; 95% of the order was not received until February 14, 1974. Design changes in the sump pumps delayed delivery to Petitioner. Two sets of duplex pumps were received on February 8, 1974; and the third set of duplex pumps was expected to be shipped on February 18, 1974.

The EPA recommended that the six-month variance be granted. The EPA stated in its Recommendation of February 15, 1974:

- "5. The Agency notes that though delay in filing a permit application until May of 1973 appears unusually long, Petitioner apparently believed at the time of this submittal that timely compliance was possible."
- "6. The Agency believes that Petitioner reasonably anticipated that timely compliance could be met if contracts were awarded by September 1, 1973."
- "7. The Agency believes that the facts as presented by Petitioner, indicate that the delays encountered were substantially beyond its control and that the Petitioner took reasonable measures to avoid delay. Thus the Agency believes that to require timely compliance would impose an arbitrary or unreasonable hardship."

The determination of whether a hardship has been selfimposed turns on the facts and circumstances of each case. The
test of unreasonable hardship is not satisfied when a petitioner
negligently but in good faith fails to comply with the Act,
rules, or regulations. A hardship is self-imposed if a reasonable, prudent man in the same or similar circumstances would
not have acted the same way. Measured against this test, we
believe Petitioner's variance should be granted. While looking
with a jaundiced eye on Petitioner's delay in applying for its
permit, Petitioner's diligence in undertaking studies in April,
1972, convinces us that more probably than not fP's actions were
reasonable and that the hardship is not self-imposed.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

- 1. Petitioner be given a variance from Rule 408 (suspended and total dissolved solids) of Chapter Three: Water Pollution Regulations, from January 1 through June 30, 1974.
- 2. Petitioner submit monthly reports to the EPA setting out its progress toward compliance with Rule 408. These reports should be sent to:

Illinois Environmental Protection Agency Division of Water Pollution Control 2200 Churchill Road Springfield, Illinois 62706

I, Christan L. Moffett, Cle				:ol
Board, hereby certify that t	the above	Opinion and	Order was	
adopted on the 7th day of 1	march	, 1974, by	a vote of	
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