ILLINOIS POLLUTION CONTROL BOARD August 23, 1973

)

MOBIL OIL CORPORATION

ν.

PCB 73-239

ENVIRONMENTAL PROTECTION AGENCY

ORDER OF THE BOARD (by Mr. Dumelle)

Petitioner filed for variance on June 8, 1973 from Rules 103 (b) (1) and 103 (b) (2) and 104 (a) of the Air Regulations, prohibiting operation without an operating permit, during the period that petitioner's pending permit appeal is being processed (Case #73-83). Agency recommendation was filed August 7, 1973. No hearing was held.

Mobil Oil Corporation operates a sulphuric acid and diammonium phosphate (DAP) manufacturing plant in DePue, Illinois which emits sulphur dioxide and sulphuric acid mist. Preliminary to making installation of certain equipment at its plant, petitioner obtained an operating permit from the Agency on January 5, 1973. However, because certain conditions were attached to the permit, which were not acceptable to petitioner, petitioner contrued the imposition of such conditions as a refusal to grant the permit pursuant to Rule 103(k) which gave the Board jurisdiction to consider the appeal of the permit denial under Section 40 of the Environmental Protection Act. Petitioner construes its action pursuant to the foregoing provisions as vitiating the permit previously issued and, accordingly, subjecting petitioner to possible assertions of violation of the Rules 103 and 104 above noted for operating without a permit.

The Agency's recommendation observes that the provision enabling an applicant to construe a condition imposed by the Agency on the permit as a refusal and thereby provide for an appeal under Section 40, is merely a procedural device allowing the Board to take jurisdiction of this type of proceeding, and does not in any way negate the permit issued. As stated in the Agency's recommendation:

"...Petitioner has been issued, and possesses, an operating permit. Since that permit has not specifically been revoked, it remains in effect, notwithstanding Petitioner's exercise of its option to consider it as not having been granted for purposes of appealing certain conditions attached thereto. Consequently, petitioner needs no variance for protection against an enforcement action for operating without a permit."

We believe this is a proper statement of the situation and, accordingly, deny the variance. Whatever petitioner may do in the operation of its facilities, it presently possesses an operating permit albeit one that it does not like, and its appeal to this Board does not nullify the permit. Should it operate in violation of any of its terms, conceivably it would be vulnerable to an enforcement action by the Agency. However, the validity of the permit and the conditions imposed by it are the subjects of the pending appeal proceeding before this Board, and no variance has been sought with respect to the terms and conditions contained in it.

Accordingly, the petition for variance is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 23^{40} day of August, 1973 by a vote of 3-6

Christan L. Moffett

Illinois Pollution Control Board