

ILLINOIS POLLUTION CONTROL BOARD
August 7, 1997

W.R. GRACE & CO. - CONN.,)	
)	
Petitioner,)	
)	
v.)	PCB 96-193
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

This matter is before the Board on a July 29, 1997 joint motion to modify Board orders dated February 6, 1997 and March 20, 1997 (Motion) filed by W.R. Grace & Co.- Conn. (Grace). The first Board order granted Grace an extension of its prior variance from certain testing requirements for its solvent mixer loading operations and catalytic converter. W.R. Grace & Co. - Conn. v. IEPA (February 6, 1997), PCB 96-193. The second order granted the parties' motion to clarify certain paragraphs of the order regarding Grace's compliance plan. W.R. Grace & Co. - Conn. v. IEPA (March 20, 1997), PCB 96-193.

Grace states that the first two steps of the compliance plan, found in the first four paragraphs of Part A of the Board's order, have been completed, namely: Grace submitted the control device study outline to the Illinois Environmental Protection Agency (Agency), and the Agency approved the outline. In addition, Grace submitted monthly progress reports and monthly emissions estimates to the Agency during the progress of the control device study, in compliance with Part B of the Board's order. Motion at 3.

Grace reports that its consultant, Versar, determined at the conclusion of its control device investigation that no control device exists for the type of solvent mixers at Grace's facility which would be technically feasible or economically reasonable. Grace reported these findings to the Agency and states that the parties expect an Agency determination of the control device study by July 31, 1997. Motion at 3-4.

As a result, Grace states that it is unable to meet the August 1, 1997 deadline for initiation of a purchase order for control equipment, or the deadlines for control device installation, operation and testing. Grace reports that, although the compliance plan did not contemplate the possibility of a lack of a control device option, the parties are working to determine how to best achieve compliance in this situation. Motion at 4-5.

Therefore, the parties request that the Board modify paragraph (A)(5) of the Board's order to allow the parties time to explore available compliance options. Grace states that the parties are willing to provide a status report of their discussions to the Board by October 1, 1997.

DISCUSSION

The Board notes that, generally, motions to modify final Board orders shall be filed within 35 days of the adoption of the order. 35 Ill. Adm. Code 101.246. However, the Board has made exceptions for requests to modify grants of variance where the modification does not change the expiration date of the variance. Continental White Cap, Inc. v. IEPA (July 22, 1993), PCB 92-155 (motion to modify filed two months after Board granted variance; Board granted motion to extend internal deadline); The Nutrasweet Company and Consumers Illinois Water Company v. IEPA (December 20, 1990), PCB 88-84 (motion to modify filed two years after Board granted variance; Board granted motion to extend internal deadline); Allied-Signal, Inc. v. IEPA (September 27, 1990), PCB 88-172 (motion to modify filed 10 months after variance grant; Board granted motion to extend internal deadline).

Similarly, in this matter, the parties are jointly requesting that certain internal deadlines be lifted by which control equipment shall be ordered, installed and tested. A modification to this part of the order does not change the termination dates of this variance. In addition, the Board notes that the statements in the joint motion demonstrate that Grace is complying substantially with the Board's order. Therefore, the Board will grant the joint motion to modify its order so that Paragraph (A)(5) reads as follows:

5. In the event that the Agency concurs with the proposed compliance method, Grace shall complete all purchase orders, installation and testing of control equipment on or before May 15, 1998. In the event that the Agency concurs with a finding that no control device option is found to be technically feasible or economically reasonable, Grace shall submit to the Board, on or before October 1, 1997, a joint progress report with the Agency which states the status of such discussions with the Agency, as well as any resolutions that have been reached.

The Board notes that a variance modification prompts the issuance of the variance in its entirety with only the paragraph at issue changed. This is done so that a complete version of the active variance and its conditions are set forth in a single document. Continental White Cap, Inc. v. IEPA (July 22, 1993), PCB 92-155. Thus, the Board's March 20, 1997 order not only clarified the February 6, 1997 final order in this matter, but replaced the order in its entirety. Similarly, today's order will not only modify the March 20, 1997 order, but also replace the order in its entirety.

The Board reminds Grace that it will need to submit a new Certificate of Acceptance to effectuate the variance as granted by today's order. The March 20, 1997 version of the variance will terminate upon today's variance becoming effective.

ORDER

For its facility located at 6050 West 51st Street, Chicago, Cook County, Illinois petitioner, W.R. Grace & Co.-Conn. (Grace), is hereby granted a two-year extension of variance from the Board's testing requirements under 35 Ill. Adm. Code 218.106(c), 218.940(b), 218,946, 218.948 and 218.Subpart UU as to its solvent mixer loading operation. This variance shall commence retroactively on March 16, 1996 and terminate on March 16, 1998. Grace is also granted a variance from the testing requirements under 35 Ill. Adm. Code 218.106(c), 218.940(b), 218,946, 218.948 and 218.Subpart UU as to its catalytic oxidizer. This wholly retroactive variance shall commence on March 15, 1996 and terminate on October 25, 1996. Finally, Grace is granted a variance from the Board's emission control requirements under 35 Ill. Adm. Code 218, Subpart QQ, and the related recordkeeping and reporting requirements under 35 Ill. Adm. Code 218, Subpart UU and Section 9(b) of the Environmental Protection Act (Act) as to its solvent mixer loading operations and its catalytic oxidizer. 415 ILCS 5/9(b) (1996). This variance shall commence retroactively on August 15, 1996 and terminate on May 15, 1998.

This grant of variance is subject to the following conditions:

- A. Grace shall submit by January 15, 1997, detailed outlines for studying other possible methods of compliance, as set forth in subsection 1 below.
 1. The outlines shall detail studies of catalytic oxidation, enclosed flare and other options, as appropriate for control devices, pursuant to the following:
 - (a) A catalytic oxidizer study shall, at a minimum, include information as to feasibility and safety concerns regarding use of the following:
 - (1) VOM monitors, or a series of monitors in the duct work leading to the catalytic oxidizer;
 - (2) Warning systems capable of diverting emissions that exceed the lower explosive limit to an emergency bypass stack;
 - (3) The installation of rupture discs and flame arresters in the duct work leading to the catalytic

oxidizer; and,

- (4) The effects of installation of a dilution box in the duct work leading to the catalytic oxidizer.
 - (b) An enclosed flare study shall provide information on all aspects of the use of a flare for emissions control.
 - (c) Grace may also submit outlines for any other control device it wishes to study.
 2. Each such outline shall include all test methods and procedures to be used during the studies, all appropriate emission factors and a timeframe for completion of the studies.
 3. Each such outline shall be subject to modification and approval by the Agency prior to commencement of the studies. The studies undertaken by Grace will include consideration and evaluation of all matters requested by the Agency to be included in the scope of studies. The Agency shall complete evaluation and approval of each outline no later than February 1, 1997.
 4. Grace shall submit the conclusions reached during the course of the investigations, including all supporting documentation, test methods and procedures to the Agency as they become available, but in any event, no later than July 1, 1997. Upon receipt, the Agency shall evaluate the conclusions based on the supporting documentation and either concur or reject the proposed compliance method as expeditiously as possible, but in any event, no later than July 15, 1997.
 5. In the event that the Agency concurs with the proposed compliance method, Grace shall complete all purchase orders, installation and testing of control equipment on or before May 15, 1998. In the event that the Agency concurs with a finding that no control device option is found to be technically feasible or economically reasonable, Grace shall submit, on or before October 1, 1997, to the Board a joint progress report with the Agency which states the status of such discussions with the Agency, as well as any resolutions that have been reached.
- B. During the pendency of the variance, Grace shall submit to the Agency by the first of each month, monthly progress reports documenting progress made on the studies delineated in paragraph A above, as well as

monthly emissions estimates. These progress reports, outlines and studies shall be submitted to:

Illinois Environmental Protection Agency
Bureau of Air
1021 N. Grand Avenue East
Springfield, Illinois 62702
Attn: Compliance Section Manager

and

Illinois Environmental Protection Agency
Bureau of Air
1701 First Avenue
Maywood, Illinois 60153
Attn: Compliance Section Manager

- C. Grace shall submit all required construction and operating permit applications, including an amendment to its pending Clean Air Act Permit Program (CAAPP) application to the Agency's Permit Section Manager at the Springfield address in Paragraph B, as required to meet all applicable regulatory requirements under the Act and the deadlines in this variance.
- D. By April 1, 1998, Grace shall comply with 35 Ill. Adm. Code 218, Subpart QQ and by May 15, 1998 with Subpart UU.

IT IS SO ORDERED.

If Grace chooses to accept this variance subject to the above order, within forty-five days of the grant of variance, Grace must execute and forward the attached certificate of acceptance and agreement to:

Tina Archer
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
Springfield, Illinois 62702

Once executed and received, that certificate of acceptance and agreement shall bind Grace to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all the terms of the Order of the Pollution Control Board in PCB 96-193, August 7, 1997.

Petitioner

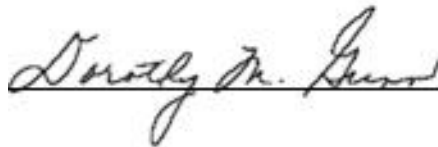
Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of August 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board