

ILLINOIS POLLUTION CONTROL BOARD
January 30, 1973

ARMAK COMPANY)
)
)
 v.) #72-414
) 72-415
) (Consolidated)
 ENVIRONMENTAL PROTECTION AGENCY)

Steven C. Bonaguidi, Assistant Attorney General, on behalf of
Environmental Protection Agency

Leo Wykell and Lawrence Gunnels of Kirkland & Ellis on behalf
of Respondent

Opinion and Order of the Board (by Mr. Lawton):

On October 19, 1972, the Board received two petitions for
variance from Petitioner relating to the dates by which operating
permit applications were to be filed and approved permits received
for it's McCook and Carpentersville facilities.

Specifically, Chapter 2, Rule 103 (b)(2)(A) of the Rules
and Regulations of the Illinois Pollution Control Board provided
that chemical and allied products industries were required to
obtain approved operating permits by December 1, 1972, which date
was later amended to January 1, 1973. Chapter 2, Rule 103(b)(2)(B)
provided that all requests for such operating permits were to have
been filed with the Environmental Protection Agency ("Agency")
at least ninety days prior thereto, October 1, 1972. Petitioner
manufactures fatty acids and derivatives at both its McCook and
Carpentersville facilities and requested extensions of the dates
by which applications for operating permits were to have been
submitted: from October 1, 1972 to April 1, 1973 for McCook;
and from October 1, 1972 to February 1, 1973 for Carpentersville.
The variance request presumably also incorporates a similar request
for extension of the date by which said permits were to have been
obtained as well.

With reference to the McCook site, Petitioner avers that
in order to provide the necessary technical and performance data
required in the permit application, complex efficiency tests on
existing emission control devices would have to be run, and
that a contract had already been granted for that purpose. This
procedure would not, according to Petitioner, be completed until
at least February, 1973, and since process flowsheets and other
materials would then have to be updated, permission to submit
permit application forms by April 1, 1973 was requested.

With reference to the Carpentersville site, Petitioner pointed out that as a result of an ambient air odor study conducted there by the Illinois Institute of Technology Research Institute, an engineering firm had been retained to study Armak's portion of the problem in the area and to recommend solutions. And similar problems relating to updating process flow sheets and the like at Carpentersville, as at McCook, according to Petitioner, led to their request to be allowed until February 1, 1973 to submit their operating permit application.

The Agency recommended on December 13, 1972 that the two requests be denied because Petitioner is not devoting adequate time or manpower to the completion of permit applications and that Petitioner unreasonably delayed the time for commencing permit application preparation at its facilities. The general facts relating to the requests were set out by Stipulation of Fact submitted to the Board on December 21, 1972 and the stipulation indicated that the necessary operating permit application forms and instruction sheets were not received by Petitioner until August 12, 1972. A hearing on the requests was held in Chicago on December 16, 1972, after the stipulation had been entered into but before it had been received by the Board, and Petitioner's Manager of Environmental Control in its manufacturing division reiterated the fact that Petitioner had not received the necessary forms and instructional material until August 12 (R. 9-10).

Petitioner maintained that it had assigned 2 1/2 men working full-time to collect the necessary data (R. 8) that assignment of other qualified personnel in the company to work on the project might have delayed the opening of its new Morris plant (R. 9), and that while it might have been possible to hire new people to help accumulate the necessary data, it would not have substantially accelerated the program since the new people would have had to become acclimatized to and familiar with company policies and procedures before becoming truly effective workers (R. 10, 17, 29). Petitioner employs about 350 people at McCook and about 30 at Carpentersville (R. 16-17). Furthermore, Petitioner's representative insisted that they were engaged in programs designed to abate emissions from its facilities and that, "we didn't feel, and don't feel, that the submission of these operating permit applications will have any effect on that program, which is already active. So we felt that there would be no harmful effect on the public" (R. 12). Such simplistic reasoning totally disregards the fundamental design underlying adoption of the statewide air permit program, and were we to accept this argument, we would be, in effect, repealing the deadline dates established in the regulations for submission of applications and for possession of approved permits. Those dates were included in the permit provisions only after careful consideration and for a very definite purpose; we are not inclined to alter them except where extraordinary or exceptional conditions of hardship exist.

We find it difficult to understand how Petitioner's abatement programs would be seriously disrupted were several of the approximately 380 people employed at the two facilities reassigned to work on the permit project, especially in view of the fact that the State has indicated that it considers the permit program to be an important element of an overall program to combat pollution in Illinois, and not just a technical exercise. Furthermore, we are not persuaded that a good deal of time would not be saved by hiring additional help to work on this project, since much of the work would appear to be of a clerical and administrative nature. And lastly, we are not convinced that the time allowed is insufficient, even in the complete absence of any new or reassigned personnel to assist in preparing the permit application, provided that the proper priority is afforded to this project.

The permit requirements are an absolutely essential part of the State's air pollution control program; viewing them as loose or avoidable technicalities can lead to a breakdown in the entire program and it is therefore our opinion that the dates for submission of permit applications and for the possession of approved permits should not be extended or relaxed except in the most unusual or extraordinary circumstances. And where such extensions are not granted, and compliance with the requirements by the deadline dates cannot be had, further action in the nature of an enforcement proceeding brought for a violation of the Board's regulations, is a distinct possibility since denial of a variance (or refusal to relax the deadline dates) in cases of this sort is also a denial to the Petitioner of a shield from prosecution; the Agency, or anyone else, may pursue this matter as they see fit. All contentions made by petitioner to justify a variance could be asserted by way of defense in such a proceeding.

In view of the above considerations, the variances requested herein are hereby denied.

Mr. Henss votes in favor of the Order but disagrees with the Opinion and will file a separate concurring Opinion.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 30th day of January, 1973, by a vote of 3 to 0.

Christian P. Moffett

