

ILLINOIS POLLUTION CONTROL BOARD
December 9, 1971

CITY OF HIGHLAND)
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 v.) # 71-284
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

The City of Highland operates an electric generating station. Its Air Contaminant Emission Reduction Program (ACERP), approved by the Air Pollution Control Board, required replacement of coal-fired boilers with oil gas units by July 1, 1971. The City petitioned us July 2 (#71-181) for a variance extending this date to October 1 on the ground that its supplier had experienced delays in equipment delivery. The Agency recommended that the extension be allowed on certain conditions.

In late September, however, the City asked for a further extension to January 1, 1972, on the ground that operating problems had developed in the new units being installed and that the additional time was needed for debugging. The Agency's recommendation, received December 2, is as before.

We grant the variance as requested. The City has encountered delays for which no one has suggested it can be blamed, and a shutdown of the old power plant before the new is ready would cause disproportionate hardship to innocent citizens relying on the City for electricity.

The Agency asks that a bond be posted to assure compliance. The statute provides for a bond, but we have generally allowed 35 days for the filing of security, and in this case 35 days would be after the date for compliance. We do not think the statute requires us to order a futile act. The Agency also asks that we impose several conditions relating to standby use of the coal boilers after they are replaced. While we have in appropriate cases upheld the Agency's right to raise issues beyond those in the petition, e.g., Greenlee Foundries v. EPA, # 70-33 (March 17, 1971); A.E. Staley & Co. v. EPA, # 71-174

(Sept. 30, 1971), we think that in a case like the present in which no hearing is scheduled we cannot act on such suggestions in the absence of more information in the Agency's recommendation. The Agency is welcome to bring any further proceeding it deems necessary with regard to issues not raised by the petition.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The City of Highland is hereby granted a variance extending the date for replacing its coal-fired generating units to January 1, 1972. Within 30 days after that date the City shall file a report with the Agency and with the Board indicating the status of its control program.

I, Christian Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 30 day of September, 1971.

