

ILLINOIS POLLUTION CONTROL BOARD
August 6, 1987

ALLIED-HASTINGS BARREL AND)
DRUM SERVICE, INC.,)
)
Petitioner,)
)
v.) PCB 86-21
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ALLIED-HASTINGS BARREL AND)
DRUM SERVICE, INC.,)
)
Petitioner,)
)
v.) PCB 87-123
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On February 19, 1987, the Board entered an Opinion and Order granting Allied-Hastings' request for variance from certain VOC regulations for its Drum Shop and its Pail Shop. Now pending before the Board are Allied-Hastings' July 10 motion for relief from final Order, the Agency's July 22 motion to strike and response to motion, and Allied-Hastings July 31 replies thereto.

The February 19 grant of variance was premised on a compliance program proposed by Allied-Hastings. This program was to involve venting of fumes from its spray booths and interior ovens in the Drum Shop to the existing drum incinerator. The Order established certain intermediate deadlines for performance of various activities relative to this plan, and required that compliance be achieved by December 31, 1987.

The Order also required Allied-Hastings to file a certificate of acceptance within 45 days. A conditional certification filed on March 30 was rejected by the Board by Order of April 1, 1987; the Order granted leave to refile on or before April 15. Allied-Hastings filed an amended certification on April 17, twelve days late.

In its motion for modification, Allied-Hastings asserts that pursuant to the variance condition requiring application for a construction permit, it retained by Anguil Energy Systems, Inc. of Milwaukee, Wisconsin, to conduct an engineering study. This May 19 study concluded that the proposed reducing of fumes to the drum incinerator would pose a long-term potential fire danger.

Allied-Hastings therefore requests the Board to reopen the record in this proceeding to enable it to "present testimony concerning the impossibility of the [previous] compliance plan and the compliance options recommended by its consulting engineer".

The Agency's motion to strike Allied-Hastings's filing was premised on Allied-Hastings's failure to support the facts alleged by affidavit, a defect which Allied-Hastings has since cured. Accordingly, the Agency's motion is denied as moot.

The Agency opposes Allied's motion on the grounds that there is no variance to be modified by reason of the fact that the certificate of acceptance was filed twelve days late. In support of this position, the Agency cites the Board's recent ruling in American Steel Container Co. v. IEPA, PCB 86-22-PCB 86-23, June 25, 1987. In that case, the Board had issued a variance Order which included a compliance plan virtually identical to this one. ASCC had retained the same consultant as did Allied-Hastings, and the results of the study were the same. ASCC did not file a certificate of acceptance of the variance, it moved for modification of the Order. Although the Board determined that no variance was in force which could be modified, and that new petitions for variance were therefore required.

Here, although filed late, Allied-Hastings did submit a signed Certificate of Acceptance agreeing to be bound by the terms of the Board's February 5, 1987 Order. The Board will accept the late filing. Therefore, the variance is in effect, and modification is therefore possible.

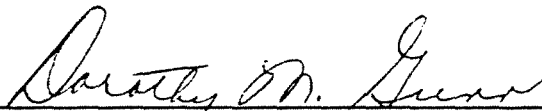
The question therefore becomes whether it is more desirable to require the commencement of a new variance proceeding, or to reopen this one. The Board believes that it is the better course in this case to require commencement of a new proceeding for variance from the PCB 86-21 Order for several reasons. Given the length of time since the Board's last action in this case, the case has been purged from the Board Members' individual files; the Board cannot assume the burden of duplication of the previous record. Additionally, Allied-Hastings has stated that it intends to present various information concerning its compliance plan at hearing. The issues will not properly be crystallized for hearing unless Allied-Hastings files a petition containing the

information so that the Agency can analyze the information filed a Recommendation.

Allied-Hastings motion to modify is denied. However, the Board will construe the motion as a new petition for variance which will be docketed as PCB 87 123. The Board will calculate its decision period as commencing today. Allied-Hastings is directed to file an amended petition which contains a compliance plan and which otherwise incorporates and updates the prior record in these matters within 45 days of the date of this Order, or the petition will be subject to dismissal. Hearing will be held, but will be scheduled only after receipt of a complete and sufficient amended petition.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 6th day of August, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board