

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1975

LEHIGH PAVING COMPANY,)
)
 Petitioner,)
)
 vs.) PCB 75-298
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

The instant Petition for Variance from Rules 103(b), 202(b), 203(a) and/or 203(b) of Chapter 2: Air Pollution, of the Pollution Control Board (Board) Rules and Regulations was filed by Petitioner, Lehigh Paving Company (Lehigh), on July 29, 1975. A Recommendation from the Environmental Protection Agency (Agency) was filed on September 18, 1975. No hearing was held in this matter.

Lehigh has produced asphalt paving mixes at its plant near Paxton, Illinois since 1959, with a break in operations from 1962 to 1965. As part of its operations there, Lehigh selects and mixes various combinations of crushed stone products and natural sand to produce aggregate for mixing with hot asphalt to produce various paving mixes. The aggregates are loaded into feed hoppers, conveyed to and then dried in an oil-fired rotary dryer, and then conveyed to a screening system for classification by size and subsequent storage in elevator bins. Aggregates of the proper size are then mixed with hot asphalt in a pug mill to produce the paving mix, which is then dumped into trucks for transportation to a paving site.

Particulate emissions from Lehigh's plant are produced at the rotary dryer, hot aggregate bucket elevator, gradation unit, and the pug mill; the greatest source of particulates is the rotary dryer. Depending on various factors, including feed rate, aggregate size and aggregate content, Lehigh's plant, if uncontrolled, would produce approximately 5,400 pounds per hour of particulate matter.

Present controls on particulate emissions at the paving mix plant include a dust collection system with a multiclone device, a wet scrubber, and a scavenger dust collection system which vents essentially all emission sources through

the wet scrubber exhaust stack. A particulate emission test performed on June 13, 1975, indicated an average emission rate, with those controls in operation, of 36.3 lbs./hr., at a process rate of 120 tons per hour. The major particulate emission is comprised of fine dust from the stone and sand aggregates in Lehigh's paving mix. Particle sizes, (ranging from one to thirty-two microns, vary with the aggregates used.

The Agency's Recommendation states that the applicable particulate emission standard for Lehigh under Rule 203(a) is 32.7 pounds per hour. Lehigh estimates that limitation as 32.74 lbs./hr.

To achieve compliance with Section 203(a), Lehigh plans to install a "Koch Flexitray" bubble-cap plate tray into its existing wet scrubber exhaust stack. The Koch Flexitray will have a venturi scrubbing effect on the exhaust gases, and will collect an estimated 90 per cent of Lehigh's current particulate emission from the wet scrubber. Lehigh estimates that emissions from the wet scrubber will then total approximately 4 lbs./hr. at the normal process rate of 120 tons per hour. Lehigh estimates that it can have this equipment installed by May 30, 1976, and can have it "debugged" and operating by July 30, 1976.

Describing the hardship on which it has based its Variance requests, Lehigh notes that in the absence of a Variance it could not operate without being subject to enforcement for failure to comply with the applicable particulate regulations. It would also be unable to obtain the required permits from the Agency, exposing it to even greater liability for violation. Were Petitioner to close, it would be unable to meet existing contracts to supply paving mix, and would be unable to bid for future paving mix contracts. Lehigh's 40-man work force presently receives an annual payroll of \$450,000, and its purchases from suppliers average between \$600,000 and \$900,000 per year.

In addition, both the Petition and the Agency Recommendation in this case point out considerable good faith on the part of Petitioner over the last few years, in its attempts to achieve compliance with the applicable air pollution regulations. The Agency Recommendation notes that Petitioner has reduced its emissions considerably over the years, and that it has reworked its fugitive dust system, eliminated the use of high percentage fine aggregates, and has taken considerable steps to increase its scrubber efficiency, both independently and as a result of Agency suggestions.

We agree with the Agency that Petitioner has indeed shown considerable good faith, and has demonstrated what the Petition describes as a desire "to be in full compliance with applicable Pollution Control Board regulations."

Before granting this Variance, however, we must examine the effect of the recent United States Supreme Court case of Train v. NRDC, 43 U.S.L.W. 4467 (U.S., April 16, 1975). Lehigh's Petition cites 1973 Agency data as indicating that there is no problem of attaining or maintaining ambient air quality standards in the area of its plant. Lehigh is located in intra-state Air Quality Control Region 66, and cites Agency figures as showing an average particulate concentration in that region of 58 ug/m³. Lehigh also notes that its plant is located in a rural area near Paxton, Illinois, and is considerably removed from the only sampling stations in that region, which are located in Bloomington and Champaign. While the Agency disagreed with Petitioner's reasoning as to the effect of Petitioner's particulate emissions on air quality in Bloomington and Champaign, the Agency does state that, based on its knowledge of the surrounding area, there is no air quality problem in the area affected by Lehigh's emissions.

We have additionally examined Agency data for the last half of 1974, which indicates that national Ambient Air Quality Standards have not been violated. Data for Bloomington indicates that no readings exceeded 260 ug/m³, and that the highest 1974 reading was 148 ug/m³; the annual geometric mean for particulates at Bloomington was 59 ug/m³ in 1974. Data from Champaign indicate no violation of the 260 ug/m³ standard, with the highest 1974 reading being 151 ug/m³; from 1973 to 1974, the annual geometric mean at Champaign dropped from 63 ug/m³ to 50 ug/m³.

Based on the record before us, we agree that a grant of this Variance will not cause or contribute to Ambient Air Quality Standard violations for particulates. Weighing the hardship upon Petitioner, its past good faith, its current attempts to achieve compliance by July 30, 1976, and the absence of any Train violation, we feel that the grant of this Variance has been justified, and that Petitioner has met its burden of proof.

We shall not, however, grant all the relief sought by Petitioner. With regard to rules 103(b), we feel that Petitioner should be able to obtain a permit from the Agency should it comply with the terms of this Variance. With regard to Rule 202(b), the Agency properly points out Petitioner has introduced no evidence of any opacity problem; lacking that, we cannot grant a Variance from that rule. Because Petitioner has not shown that it was in compliance as of April, 1972, (the effective date of part two of Chapter 2 of the Air Pollution regulations), Rule 203(b) is not applicable to Lehigh.

We agree with the Agency that this Variance should be conditioned on Lehigh's application for all appropriate construction and operation permits, and that a system of reporting by Petitioner will assist the Agency in monitoring Lehigh's progress towards compliance. We feel that a performance bond of \$5,000, (Petitioner's compliance plan, described above, is expected to cost \$15,000), is appropriate in light of Lehigh's past good faith efforts to achieve compliance.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD THAT Petitioner, Lehigh Paving Company, be granted a Variance from Rule 203(a) of Chapter 2: Air Pollution, of the Illinois Pollution Control Board Rules and Regulations, until July 30, 1976, subject to the following conditions:

1. Petitioner shall apply for and obtain from the Environmental Protection Agency all appropriate construction and operation permits for the equipment described in the foregoing Opinion.

2. Petitioner shall, on the first day of each month after the date of this Order, submit to the Environmental Protection Agency a report detailing progress toward completion of the compliance program outlined in the foregoing Opinion. Those reports shall be submitted to the following address:

Environmental Protection Agency
Control Program Coordinator
Division of Air Pollution Control
2200 Churchill Road
Springfield, Illinois 62706

3. Within 30 days of the date of this order Petitioner shall submit, in a form acceptable to the Environmental Protection Agency, a performance bond in the amount of \$5,000, covering the construction outlined in the foregoing Opinion; such performance bond shall be sent to the above address.

4. Within 30 days of the date of this order Petitioner shall execute and forward to the above address, the following certification of acceptance:

I, (We), _____, having read the Order of the Illinois Pollution Control Board in Case No. PCB 75-298, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED _____

TITLE _____

DATE _____

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 16th day of October, 1975, by a vote of 3-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board