

ILLINOIS POLLUTION CONTROL BOARD  
March 28, 1977

CPC INTERNATIONAL, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 76-208  
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 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

MR. JAMES GLADDEN, JR. AND MS. PERCY ANGELO, OF MAYER, BROWN & PLATT, APPEARED ON BEHALF OF PETITIONER;  
MR. PETER ORLINSKY OF THE ENVIRONMENTAL PROTECTION AGENCY APPEARED ON BEHALF OF RESPONDENT.

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

On August 6, 1976, CPC International, Inc. (CPC) filed before the Board a Petition for Review of Denial of Permit Application. A hearing in this matter was held on January 20, 1977 in Chicago, Illinois. CPC has filed a waiver of the 90-day rule set by statute.

CPC operates three coal-fired boilers at its corn wet milling plant in Bedford Park, Illinois. Each boiler has a rated capacity of 332,500,000 BTU's input per hour and is presently equipped with a multiclone dust collector limiting particulate emissions from each boiler to .48 lb/million BTU's of actual heat input (R.27).

The Environmental Protection Agency (Agency) granted CPC operating permits for its three coal-fired boilers on March 16, 1973. Those permits expired on May 30, 1975, the effective date for Rule 203(g)(1)(A) of the Board's Air Pollution Regulations (Chapter 2 of the Board's Rules and Regulations).

On September 23, 1973, the Board granted CPC a one-year variance from Rule 104 of Chapter 2 which requires all facilities to have Agency approved compliance programs and project completion schedules

(PCB 73-212). Under the terms of that variance, CPC was to achieve final compliance by no later than May 30, 1976. On December 19, 1974, the Board extended CPC's variance from September 20, 1974 to December 31, 1974 and extended the date for final compliance until August 30, 1976 (PCB 74-340). On March 5, 1975 the Agency renewed CPC's operating permits until August 30, 1976.

Following a series of setbacks, which included the necessity of completely changing its compliance program, CPC realized that it would be unable to comply with Rule 203(g)(1)(A) by August 30, 1976. Consequently, on April 25, 1975, CPC petitioned the Board for a variance from Rule 203(g)(1)(A), alleging that the three boilers would be in compliance by November 22, 1976, January 22, 1977 and February 22, 1977, respectively (PCB 75-175). Before the Board rendered its decision in PCB 75-175, the Illinois Supreme Court, in Commonwealth Edison v. Pollution Control Board, 62 Ill.2d 494 (1976), reversed the Board's adoption of Rule 203(g)(1). Based on that decision, on February 11, 1976, the Board dismissed CPC's request for variance as moot.

On April 27, 1976, CPC applied to the Agency for a renewal of its operating permits. The Agency denied the permits on May 11, 1976, citing possible violations of Rules 102, 303 and 307.

The Agency at the hearing indicated that it would no longer rely on Rule 303 as a basis for denial. The Board agrees that Rule 303 was an inappropriate basis of denial.

The Agency has indicated that its policy since the Commonwealth Edison decision is to require each permit applicant to demonstrate that operation of its source will not cause or contribute to a violation of ambient air quality standards. The Agency will accept as a showing of non-violation a showing that the source is in compliance with the regulations remanded in Commonwealth Edison. CPC does not dispute that it submitted no air quality impact data with its permit application and that its emissions do not comply with remanded Rule 203(g)(1).

CPC alleges that because of the Agency's past recommendations and because of the Board's past variance decisions, the Board and the Agency are estopped from denying the operating permits sought herein. CPC alleges that the Agency is merely enforcing the remanded regulations and is, therefore, defying the Court's Order in the Commonwealth Edison case.

The Agency indicates that CPC has "embarked on a quite ambitious program to install electrostatic precipitators", which the Agency

feels will bring the emission levels from the boilers down to the level of remanded Rule 203(g)(1)(R.37). The Board acknowledges and commends CPC for its program. Nevertheless, the Board must uphold the Agency's denial of CPC's applications for operating permits.

The Board recently decided a permit appeal with facts very similar to the present case Ashland Chemical Company v. EPA, PCB 76-186 (February 17, 1977). In Ashland, the Board held:

"The issue before us is whether Ashland met its burden of proof. Having submitted no information whatsoever on air quality impact, Ashland has clearly failed in its burden, and the permit was properly denied." Ashland at p.4.

CPC has similarly submitted no air quality impact information whatsoever and has, therefore, failed in its burden of proof under Section 39 of the Act. Although Rule 203(g)(1) was remanded, the Agency and the Board are still required to protect air quality and sources are still on notice that they must comply with all rules and regulations still in effect. CPC has made no showing that its emissions will not cause or contribute to a violation of ambient air quality standards. Therefore, the permit was properly denied on the basis of Rules 102 and 307. The Board notes that, as pointed out in our July 8, 1975 decision in PCB 75-175, the variance procedure is still open to Petitioner.

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 CPC's permit denial appeal filed August 6, 1976, is hereby denied.

Mr. Young concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28<sup>th</sup> day of March, 1977 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board