

ILLINOIS POLLUTION CONTROL BOARD
October 4, 1979

IN THE MATTER OF:)
) R79-2
PETITION FOR AMENDMENT TO)
RULE 204(f)(1))

INTERIM ORDER OF THE BOARD (by Mr. Goodman):

The Agency's Motion to Dismiss this regulatory proceeding is denied.

The Board interprets the incorporation by reference of Shell Oil Company's July 24, 1978 petition for variance (PCB 78-190) as an incorporation for purposes only of the cost effectiveness of the regulatory proposal. Proponents' allegations concerning cost effectiveness are not irrelevant as the Agency states and proof is not conditioned on matters alleged in such variance petition.

The Agency apparently misinterprets the necessity of Shell Oil Company's involvement in the regulation from Proponents' use of the phrase in (F)(2), "from ... sources located in the associated petroleum refinery, or refineries if allowed more than one," which phrase refers to installations and not entities. Contrary to the Agency's assertion, Shell Oil Company is not a necessary party to this proposal; this proposal could have applicability within Illinois with or without Shell's participation.

Shell Oil Company would be affected by the proposed regulation in two cases: if Shell owned or operated a sulfur recovery plant upon which "construction" commenced (1) on or after October 1, 1976; or (2) prior to October 1, 1976, providing either (a) that specifically designed tail gas sulfur dioxide control equipment was installed and "total actual" sulfur dioxide emissions from certain sources within the refinery/ies are reduced by a certain amount, "such reduction [to be] embodied in an enforceable permit limitation", or (b) that Shell caused or allowed sulfur dioxide emissions to exceed 4,000 ppm on a 24-hour average basis.

Even if the proposal could possibly be construed as one concerning "a voluntary associational and interdependent control plan," and assuming that Shell Oil Company does not intervene in the proceedings, Shell's conduct indicating non-association with such control plan would constitute a viola-

tion of the regulation if and when adopted and made effective; such possible future conduct however. does not render this proposed regulation hypothetical. Shell's alleged "intent" not to participate cannot be judged on the basis of a petition for variance it filed in 1978.

The Agency's alternative motion to postpone scheduling of hearings is granted. The Board finds that information derivable from modeling studies currently undertaken by the Agency for the United States Environmental Protection Agency should be made available to all persons at hearings regarding this proposal. Such information will result in more efficient rulemaking by the State.

IT IS SO ORDERED.

Mr. Dumelle concurs

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 4th day of October, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board