

ILLINOIS POLLUTION CONTROL BOARD  
April 8, 1976

INTERNATIONAL HARVESTER COMPANY, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 73-211  
 )  
 ) ENVIRONMENTAL PROTECTION AGENCY, )

- and -

CITIZENS FOR A BETTER ENVIRONMENT, )  
 )  
 ) Complainant, )  
 )  
 ) v. ) PCB 74-318  
 )  
 ) INTERNATIONAL HARVESTER COMPANY, )  
 )  
 ) Respondent. )

Mr. Alan I. Becker, Kirkland & Ellis, appeared for Petitioner.  
Mr. Roger C. Zehntner, Appeared for Respondent.

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

This matter comes before the Board upon Petition of International Harvester Company (Harvester) in PCB 73-211 appealing the Illinois Environmental Protection Agency (Agency) denial of their operating permit application for coke ovens at Harvester's Wisconsin Steel facility. PCB 74-318 was consolidated, herewith, by the Board Order of November 13, 1975. In PCB 74-318, Petitioner is charged with operating a pollution source without an operating permit issued by the Agency in violation of Rule 103(b) of the Air Pollution Control Regulations of the State of Illinois.

The issue to be determined in this case is whether the Agency rightfully denied Petitioner a permit to operate their coke ovens at Wisconsin Steel. The resolution of that issue will be determinative of the issue in PCB 74-318, i.e., whether Harvester has been

operating its coke ovens without a permit. A hearing was held in this matter on October 14, 1975, following which a number of briefs were filed by both parties, the last being filed with the Board on January 26, 1976. An open waiver of Harvester's right to a decision within 90 days pursuant to Section 40 of the Environmental Protection Act was filed by Harvester on August 9, 1974.

The Permit Appeal, PCB 73-211, was filed by Harvester on May 21, 1973. At that time Harvester requested the Board to defer consideration of the permit appeal until after the proceedings in a pending variance case, PCB 73-176, were concluded. The Board, on May 24, 1973, granted this motion to defer consideration and subsequently granted the variance on July 26, 1973. Nothing in the variance Opinion and Order referred to a variance from the Permit Rules or required Harvester to obtain a permit.

On August 4, 1975, Harvester moved to amend its Notice of Appeal incorporating the variance petition and supporting testimony of PCB 73-176. In an Order of August 28, 1975, the Board in granting Harvester's motion to amend their petition stated: "The question of whether a permit should have been forth coming (sic) after the grant of a variance in International Harvester Company v. Environmental Protection Agency, PCB 73-176 of July 26, 1973, is not at issue in this case."

What is at issue in this case is whether Harvester is entitled to an operating permit for their coke ovens based upon their original application for a permit together with the variance granted by this Board in PCB 73-176. Harvester argues that during negotiations with the Agency concerning the permit application and the variance proceeding, it was their understanding that, should the Board grant the variance, the Agency would thereafter issue an operating permit. This, Harvester claims, is the basis for the voluntary dismissal of an appeal they were prosecuting concerning the air regulations. The Agency, on the other hand, argues that it was incumbent upon Harvester to reapply for an operating permit subsequent to the issue of the variance by the Board in PCB 73-176.

There can be no question that this situation is the progeny of a very heavily burdened permit procedure which existed back in 1972. There is also no question that this case is stale. The Board, after full consideration of the three year old permit denial and the more recent arguments by the parties concerning that denial, finds that the Agency did not err in their denial of a operating permit for the coke ovens. This is based upon the fact that Harvester's permit application did not contain a proposed compliance plan. In mitigation, the Board finds that there was some basis for Harvester's belief that their

procedure, whereby they sought to cure the defect in their permit application through a variance proceeding, was reasonable. The Board must, nevertheless, find that Harvester's reliance on its novel procedure was misplaced and that the permit denial was correct.

Having upheld the permit denial, it is an inescapable conclusion that Harvester has been operating their coke ovens at Wisconsin without an operating permit issued by the Agency. Harvester, therefore, has indeed operated in violation of Section 103(b) of the Air Regulations as alleged by Citizens For A Better Environment in PCB 74-318. Considering the confusion inherent in the permit procedure in 1972-1973, the Board finds that a penalty would be unjustified and none will be assessed.

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


ORDER

It is the Order of the Pollution Control Board that:

1. The operating permit denial appeal by International Harvester Company in PCB 73-211 be, and is hereby, denied.
2. International Harvester shall apply for and receive an operating permit for their coke ovens at Wisconsin Steel Division within 120 days from the date of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8<sup>th</sup> day of April, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board