

ILLINOIS POLLUTION CONTROL BOARD
September 23, 1999

MINNESOTA MINING AND MANUFACTURING)
COMPANY,)
)
Petitioner,)
)
v.) PCB 99-114
) (Variance - Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)
)

JEFFREY M. FORT AND CYNTHIA FAUR, SONNENSCHNEIN, NATH & ROSENTHAL, APPEARED ON BEHALF OF THE PETITIONER; and

LAUREL KROACK, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

In this proceeding petitioner Minnesota Mining and Manufacturing Company (3M) seeks extension of a variance from the Board's air emission regulations at 35 Ill. Adm. Code 218.Subpart QQ. The extension would apply to the variance granted by the Board in Minnesota Mining and Manufacturing Co. v. Illinois Environmental Protection Agency (3M v. IEPA) (February 18, 1998), PCB 95-90. For the reasons set forth below, the Board grants the requested extension.

BACKGROUND

3M operates a plant in Bedford Park, Illinois, where it manufactures pressure sensitive tape. The first step in 3M's manufacturing process is the production of adhesives and saturants in the plant's compounding area. (Operations at the Bedford Park plant are described in more detail in the Board's order granting 3M's variance. See 3M v. IEPA, slip op. at 2.) The Board's order of February 18, 1998, granted 3M a variance from the Subpart QQ air emission regulations under which 3M could avoid complying with the emission reduction requirements which would otherwise be applicable to its compounding operations. As a condition of the variance, 3M committed to reduce total emissions from other components of its operation such that total emissions from the Bedford Park plant would go down, despite noncompliance with the Subpart QQ regulations in the compounding area. (Compounding generates only around 2% of total emissions from the plant; most emissions come from coating operations. *Id.* at 4-5.) Specifically, 3M accepted a limit on emissions of volatile organic materials of 2,455 tons per year, and limited its seasonal allotment under the Emissions Reduction Market System (ERMS) program to 1,023 tons per season.

As a compliance plan, 3M intended to participate in the State Environmental Management System program set up under 415 ILCS 5/52.3-1 through 52.3-4 (1998), by entering into an Environmental Management System Agreement (EMSA) with the Illinois Environmental Protection Agency (Agency). Such an agreement would supersede the Subpart QQ rules. See 415 ILCS 5/52.3-3(a) (1998). The variance expired on March 15, 1999; 3M and the Agency expected the EMSA to have been finalized by then.

After the variance was granted, the Agency and the Board adopted new rules regarding EMSAs. The Agency adopted rules effective March 20, 1998, that contain procedural requirements for participation in the EMSA program. See 35 Ill. Adm. Code 187 (adopted at 22 Ill. Reg. 6217, effective March 20, 1998). Also, on February 4,

1999, the Board adopted rules relating to involuntary termination of EMSAs. See In the Matter of: Hearings Pursuant to Specific Rules, Proposed New Subpart K, Involuntary Termination of Environmental Management System Agreements, 35 Ill. Adm. Code 106, Subpart K (February 4, 1999), R99-9. As a result of requirements imposed by the Agency's new rules, according to 3M, the EMSA could not be finalized by March 15, 1999. Pet. at 3, 5-6. On February 18, 1999, 3M filed a petition seeking an extension of the variance to and including March 15, 2000.

The Agency filed its recommendation on April 12, 1999, recommending that the Board grant the requested extension. A hearing was held in Chicago, Illinois, on August 20, 1999. Only one witness testified at the hearing. The hearing officer established a public comment period of 14 days from the date that the hearing transcript was received by the Board. The hearing transcript was received on August 30, 1999; accordingly, the public comment period ran through September 13, 1999. No public comments were received.

STATUTORY FRAMEWORK

Section 36(b) of the Illinois Environmental Protection Act (Act), 415 ILCS 5/36(b) (1998), provides:

Except as provided by Section 38 of this Act, any variance granted pursuant to the provisions of this Section shall be granted for such period of time, not exceeding five years, as shall be specified by the Board . . . Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown.

EVIDENCE

At the hearing, Paul F. Narog, a senior environmental engineer for 3M, testified on behalf of 3M. ¹ 3M Exh. 7 at 1. Based on his testimony, the Board finds the following facts:

When 3M received its variance on February 18, 1998, 3M believed that an EMSA could be finalized with the Agency by March 15, 1999. However, the drafting process was delayed while rules implementing the Regulatory Innovation program were adopted by the Agency. The new rules contained requirements that 3M had not contemplated before the rules were proposed and finalized, such as submittal of a Letter of Intent to enter into an EMSA and new stakeholder participation requirements. 3M Exh. 7 at 4-5. With these changes in the rules governing EMSAs, 3M and the Agency were not able to finalize the EMSA by March 15, 1999, because there was not enough time to satisfy the public participation requirements of the rules. *Id.*

Although the delays created by the new rules made it impossible for 3M and the Agency to enter into the EMSA by March 15, 1999, 3M and the Agency continued working together to develop an EMSA. 3M Exh. 7 at 5. In December 1998, 3M submitted a Letter of Intent to sponsor a pilot project under the Regulatory Innovation Program. 3M Exh. 3. On February 18, 1999, the Agency accepted 3M into the program. After the Board adopted rules in R99-9, the requirements of the rules were included in the working draft of 3M's EMSA. 3M Exh. 7 at 5.

3M also began working with a local Bedford Park community action group, whose members agreed to become stakeholders for the project. 3M and the Agency held their first meeting with stakeholders on April 21, 1999. In May 1999, the stakeholders were given a copy of the preliminary draft of the EMSA. On June 17, 1999, a second stakeholders' meeting was held so that stakeholders could comment on the preliminary draft. 3M Exh. 7 at 5-6.

¹ Mr. Narog submitted written testimony, which was accepted as if read at the hearing and admitted as 3M Exhibit 7.

After meeting with the stakeholder group, 3M and the Agency continued to develop the EMSA using stakeholder input. On August 19, 1999, 3M formally submitted the EMSA to the Agency as a "draft EMSA," required by the Agency's rules. On the same date, 3M submitted a public notice of the EMSA submittal for publication in local newspapers. 3M Exh. 7 at 6.

3M anticipates that it will be able to finalize the EMSA soon. It hopes to have a hearing on the EMSA before the end of the year and have the EMSA in place before March 15, 2000. 3M Exh. 7 at 6.

DISCUSSION

In PCB 95-90, the Board found that 3M would suffer unreasonable hardship if required to comply immediately with Subpart QQ. The Board further found that this hardship outweighed the public's interest in enforcement of the requirements of Subpart QQ, and that the emissions limits imposed as conditions of the variance would ensure that there would be no adverse effect on the environment as a result of the granting of the variance. 3M v. IEPA, slip op. at 7. The record in this case, which incorporates the record in PCB 95-90, indicates no change in these circumstances. Based on Norag's testimony, the Board finds that 3M has shown satisfactory progress towards implementation of its compliance plan under the variance granted in PCB 95-90, *i.e.*, finalization of the EMSA. The Board accordingly will extend 3M's variance for an additional year pursuant to Section 36(b) of the Act.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

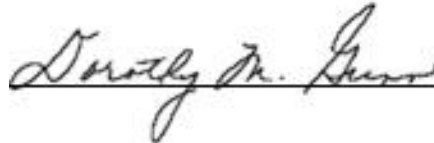
ORDER

The term of the variance granted to Minnesota Mining and Manufacturing Company by the Board's order of February 18, 1998, in PCB 95-90, is extended to and including March 15, 2000. Conditions on the original variance remain in effect.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 23rd day of September 1999 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board