

ILLINOIS POLLUTION CONTROL BOARD
January 8, 1981

BEMIS COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 80-131
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

MR. ROY HARSCH APPEARED ON BEHALF OF PETITIONER;

MR. JOHN VAN VRANKEN APPEARED ON BEHALF OF RESPONDENT.

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

Bemis Company, Inc. (Bemis) on July 14, 1980 filed with the Board an appeal of the Agency's June 19, 1980 denial of a permit application to operate two coal-fired boilers at its Peoria plant. In denying the permit the Agency cited, pursuant to §39 of the Illinois Environmental Protection Act (Act), that to issue Bemis the permit might violate Rules 102 and 308 of the Chapter 2, the Board's air pollution control regulations, and §9(a) of the Act. More specifically, excess sulfur dioxide emissions "violates the State Implementation Plan (SIP)" (R.8).

At hearing, both Petitioner and Respondent stated that the only issue involved was a legal one, i.e., the legal effect of the SIP on the disposition of permit applications, and that this had been addressed by the Board on October 2, 1980 in Sherex Chemical Company, Inc. v. Illinois Environmental Protection Agency, PCB 80-66 (Tr.4-6). However, the issue is whether Petitioner demonstrated that operating its two boilers would not cause or contribute to a violation of those provisions of the Act or the Board's regulations cited in the letter of denial. Section 39(a) of the Act. Petitioner's stipulation is, therefore, not taken as an admission.

Petitioner's manufacturing facility on Sloan Street in Peoria operates one 100 million Btu's/hr. (80,000 lbs. steam/hr.) coal-fired boiler, equipped with a multiclone dust collector and an electrostatic precipitator to control particulate emissions, and a standby 90 million Btu's/hr. (70,000 lbs. steam/hr.) oil/gas-fired boiler. The facility includes a paper mill and a multi-wall bag plant (Pet., p.1). The standby boiler when fueled with natural gas or No. 5 fuel oil is in compliance with Rule 204(c)(2) of Chapter 2. There is no equipment at present to control sulfur dioxide emissions. A residential area is located approximately 600 feet west of the plant (R.2, pp.6-7).

Petitioner's permit appeal "incorporates by reference" certain testimony presented in the Board's sulfur dioxide regulatory proceedings R77-15, et al. and alleges that its operation does not cause or contribute to sulfur dioxide ambient air quality violations in the Peoria major metropolitan area (Pet., pp.2-3). Petitioner also appends the report of a study performed by ETA Engineering, Inc. dated July, 1976 as Exhibit B to its permit appeal. Such documents are not reviewable by the Board unless they are either part of the Agency record in this matter or were considered by the Agency in making its determination.

Both documents were mentioned in Petitioner's attachment to its permit application, as was the Agency's own study of air quality in the Peoria area. The specific results of these three documents were not cited, although the Agency had knowledge of these results. The Board presumes that the Agency considered all three documents in making its decision.

Petitioner's April 22, 1980 application for renewal of its prior (January 13, 1975) permit stated that there had been no modifications in operations as described in the prior permit, that there was full compliance with all conditions of the prior permit, and that operation was in compliance with all rules effective on or before the date of the application (R.13). At the time of that prior permit, Petitioner had no proposed program to control its sulfur dioxide emissions, and this was partial reason for recommending denial of a 1975 variance request (R.2, pp.7-9).

As a result of a routine surveillance visit by the Agency to the plant, the Agency on May 4, 1979 sent Petitioner a letter advising of violations of Rules 102, 103(b), and 308 of Chapter 2 by virtue of operating without a permit and emitting excessive amounts of sulfur dioxide; the letter requested Petitioner's appearance at a compliance meeting within 30 days (R.10). Such meeting was held on May 23, 1979, at which time Petitioner advised the Agency that it was awaiting the Board's decision in sulfur dioxide-related regulatory matters [R77-15 and R78-14] and that it had had technological and economic difficulties with burning low sulfur coal in the boilers (R.12).

An Agency intraoffice memorandum dated May 7, 1979 indicates that sulfur dioxide emissions from both boilers are 308.1 lbs./hr. (1,294 tons/yr.), whereas only 113.4 lbs./hr. (176 tons/yr.) are allowed (R.11).

In Petitioner's April, 1975 petition for variance from the sulfur dioxide emission limitations, an uncontrolled emission rate of 4.88 lbs./million Btu's was cited (R.6, p.5). The Agency's subsequent variance investigation confirmed this (R.2, pp.5-6). The operations permitted by Petitioner's prior permit, "Boilers No. 1 and No. 2 with precipitator" (R.2, p.2), have a sulfur dioxide emission rate ranging from 4.88-5.61 lbs./million Btu's depending on the sulfur content of the (washed) coal (Tr.11). Petitioner's present coal supply has a sulfur content which could

range as high as 3.1%, which would result in emissions up to 5.61 lbs./million Btu's. Oil may be used in cases of nonsupply of coal (Tr.16-7).

Although the Agency denied the permit in part on the basis that Rule 308, the state's sulfur dioxide ambient air quality standards, might be violated, no evidence was produced at hearing as to background concentrations in Peoria or as to Petitioner's contribution to concentrations of sulfur dioxide in the area. The only evidence in this proceeding as to background concentrations which the Board can properly consider in reviewing the accuracy of the Agency's determination regarding a possible violation of Rule 308 is the statement in the ETA report at page 23 that its 1975 report for Commonwealth Edison Company's Powerton plant measured annual average background concentrations of 10 ug/m³ and, under "worst case conditions," 69 ug/m³.

There is no clear indication from the Agency record that the Agency relied upon either testimony in R77-15 or the 1976 ETA report in finding possible violations of Rule 308. Furthermore, the application stated that there had been no change in operations since 1975, and the Agency had a right to rely on such a statement and disregard data derived from measurements taken after 1975. From a review of the Record certified by the Agency, seven of the ten record items (not including the application and denial letters) were related to data existing during or before 1975. The remaining three items related to the May, 1979 inspection.

The ETA study did not include the effects of the terrain of the Peoria area and the dispersion models used were not calibrated. However, the Agency's Peoria area study, using a more comprehensive modeling analysis, included these considerations. It concluded that the 1.8-lb. emission limitation is "adequate" for the sulfur dioxide SIP. Exhibit 3, a transcript of the testimony of an ETA representative given on April 16, 1979 in the Board's proceedings R77-15, et al., indicates that the emissions data used by the Agency showed that Petitioner does not violate the state ambient air quality sulfur dioxide standards (Rule 308). The testimony continued that Petitioner's contributions to these standards were as follows: (1) annual arithmetic mean of 7.3 ug/m³ (9% of 80.0); (2) maximum 24-hour of 170 ug/m³ (47% of 365); and (3) maximum 3-hour of 680 ug/m³ (52% of 1,300).

This evidence was not disputed by Respondent at hearing. However, Petitioner presented no evidence that such contributions did not cause the ambient air quality standards to be exceeded. In permit appeal proceedings, petitioners have burdens of proving that the information contained in their applications demonstrates that the operation would not cause a violation of the Act or the Board's regulations. There is nothing in the record as to whether the Agency considered that the degrees of Petitioner's contributions to ambient air concentration levels would cause the levels to exceed those in Rule 308 or would cause a violation of Rule 102 or §9(a) of the Act. Finally, as previously mentioned, the record

is unclear as to whether the Agency relied on Petitioner's statement that no change in operations had occurred since 1975 or whether the Agency relied on its site inspection of May, 1979.

For these reasons the Agency's denial must be overturned. As to the issue of the legal effect of the SIP upon the Agency's permitting powers under the Act, the decision in Sherex, supra, applies.

Respondent's December 19, 1980 motion to file supplement to record is granted.

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

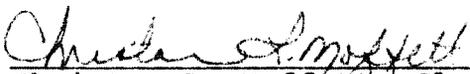
ORDER

The Illinois Environmental Protection Agency's June 19, 1980 denial of Bemis Company, Inc.'s application for an operating permit (D73010712) is reversed.

The application is remanded for reconsideration in light of the Opinion in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted by the Board on the 8th day of January, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board