

ILLINOIS POLLUTION CONTROL BOARD
September 4, 1975

R. FOX, LTD.,)
 Petitioner,)
))
 v.) PCB 75-212
))
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,))
 Respondent.)

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

Petitioner R. Fox, Ltd., filed its original Petition for Variance on May 21, 1975. Petitioner sought a Variance from Rule 204(c)(1)(a) of Chapter 2: Air Pollution, to allow the continued use of high-sulfur Illinois coal at its Belleville, Illinois plant.

On May 22, 1975, the Board entered an Order requiring more information to support that Petition, as follows:

1) The Petition failed to address the requirements of the United States Supreme Court Decision of Train v. Natural Resources Defense Council, 43 U.S.L.W. 4467 (U.S., April 16, 1975).

2) Petitioner's claim of financial hardship was unsupported.

3) Petitioner's claim that compliance is not feasible was unsupported.

4) Petitioner failed to state the length of time for which the Variance is sought.

R. Fox, Ltd. submitted additional information to the Board on June 18, 1975. A Recommendation from the Environmental Protection Agency (Agency) was subsequently received on July 23, 1975. No hearing was held in this matter.

As is pointed out in the Agency Recommendation, the Amended Petition submitted June 18, 1975 has not corrected Petitioner's lack of an adequate compliance plan. Petitioner merely states that it desires a variance for the maximum time, "until coal with sulfur dioxide removal is available." (May 21, 1975 Petition, p.3).

The original Petition in this matter discussed the costs of conversion to either low-sulfur coal or oil to replace the Illinois coal presently used in connection with Petitioner's boilers. The conclusion was reached that neither of these methods of compliances are within the financial means of Petitioner.

In its Amended Petition, Petitioner in essence merely restated that conclusion. Costs for conversion to low-sulfur oil were added, and costs for conversion to low-sulfur coal were again treated.

While the Board sympathizes with Petitioner regarding the cost of compliance, the Board has often held that variances will not be granted in the absence of some plan to achieve compliance. No such plan is offered by Petitioner. That being the case, the other issues raised by Petitioner need not be addressed; the Petition shall be dismissed without prejudice, for lack of an adequate compliance plan. Petitioner is invited to resubmit a new Petition more fully addressing the question of eventual compliance. In addition, Petitioner is referred to the other points raised in the Agency's Recommendation.

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:

The Petition for Variance of R. Fox, Ltd. in this matter is dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 4th day of September, 1975, by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board