

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1973

J. R. SHORT MILLING COMPANY)
PETITIONER)
)
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 v.) PCB 73-251
)
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 ENVIRONMENTAL PROTECTION AGENCY)
 RESPONDENT)
)
)

MR. PHILLIP B. BOWMAN, on behalf of the J. R. SHORT MILLING COMPANY.
MR. LARRY R. EATON, ASSISTANT ATTORNEY GENERAL, on behalf of the ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This action concerns a petition for variance filed by the J. R. Short Milling Company on June 18, 1973. On June 21, 1973, the petition was reviewed by the Board and was found to be inadequate. An order of the Board was written directing Petitioner to file an amended petition within 21 days. An amended petition was filed on July 6, 1973; said amended petition contained all the pertinent requirements and was accepted by the Board. The Agency filed a recommendation on August 20, 1973. The recommendation called for conditional approval after sufficient proof of fact was established at hearings. Petitioner filed a response to the Agency recommendations on August 30, 1973. Hearings were held on September 5, 1973, in Kankakee, Illinois.

J. R. Short Milling Company is an agriculturally-oriented processing firm operating two plants at its Kankakee, Illinois, location. The first plant is a corn milling division which produces more than 5,000,000 bushels of corn per year. The second plant is its bakery division, which produces special flours for the wholesale baking industry. The company accounts for about 8 percent of the total market. The J. R. Short Milling Company also operates a 1,000,000 bushel grain elevator for storage and drying of said grain.

J. R. Short requests a variance from "All applicable rules and regulations" which would then allow them to burn Illinois coal for one year. The Agency has interpreted this to mean a variance to Rules 3-3.122 and 2-2.53 of Rules and Regulations Governing the Control of Air Pollution continued pursuant to Section 49 (c) of the Environmental Protection Act. The Board agrees with the Agency that the variance consideration should be limited to these two rules.

The situation complicates itself in that an enforcement action (PCB 72-218) is still pending, and the facts uncovered in PCB 72-218 are strongly interwoven with this case and cannot be ignored in this variance consideration. Indeed, the Stipulation entered into by the J. R. Short Company and the Environmental Protection Agency pursuant to PCB 72-218 was offered in evidence in these hearings as an amendment to the Agency's recommendation (Exhibit C). There will be no attempt to resolve PCB 72-218 in this opinion; however, a brief description of the events is mandatory in an understanding of this action.

BACKGROUND ON PCB 72-218

1. The J. R. Short Co. was cited on December 15, 1971, and on January 10, 1972, by the Environmental Protection Agency for violations of rules 3-3.122 and 2-2.53, and Section 9 (A) of the Act. At this time J. R. Short was burning Illinois coal in an old steam generating boiler.
2. A stipulation was entered into by the Short Company and the Environmental Protection Agency. Among other points the J. R. Short Company agreed to purchase, install, and operate an oil/gas fired boiler and retire the old coal-fired boilers.
3. The above-mentioned condition was met, with the new boiler becoming operational on or about June 1, 1973.

With these facts in the opinion, we can proceed with the variance plea. The Petitioner requests variance because he claims it is almost impossible to obtain gas or oil to operate its new boiler. Petitioner further claims that he would much rather burn fuel oil than coal: (R 121) "We ultimately want to settle down on fuel oil or gas--It's a much better operation. It's easier. It's automatic."

The question as to Petitioner's attempts to purchase either gas or fuel oil (#2,4,5, or 6) are heavily documented by both exhibit and testimony. (Pet. ex. #5,6) (R. 61-67, R. 71-73)

Petitioner has also shown (Pet. ex. #7) (R. 76-81) that all attempts to work through the Federal Office of Oil and Gas to obtain oil or gas under the voluntary allocation system have yielded no success.

J. R. Short has since the inception of its operations at Kankakee used an existing oil-fired drier, so that it did have a history of oil purchases during the latter part of 1972. This period could then be used as a basis for an allocation program. However, the crop dried in 1972 was a dry one initially, and therefore J. R. Short Company purchased only about 40,000 gallons of oil. It is projected, and un rebutted, that the crop now in the field will require substantially more oil to dry (R. 117), up to 100,000 gallons. J. R. Short Company is therefore maintaining that a minimum inventory of 90,000 gallons should be kept on hand in anticipation of oil usage for the upcoming drying season.

J. R. Short Company has also entered into evidence (R. 4) that it would be willing to burn low-sulphur Kentucky coal before resorting to Illinois coal. Petitioner has entered into evidence (Pet. ex. 8) a report by Albert F. Duzy of Paul Weir Co., Inc., mining engineers and geologists, stating that low-sulphur Kentucky coal will meet present sulphur, opacity, and particulate regulations. The Agency disputes (R. 86) that the reference to particulate matter is correct.

In summary, the Petitioner proposes to burn fuels in the following order to supply process steam, as supplies become available:

1. Natural gas
2. #2 fuel oil
3. Low-sulphur Kentucky coal
4. Illinois coal

We now turn to an investigation as to whether J. R. Short Co. Inc. has met the conditions under which a variance is to be granted.

I. Unreasonable hardship

It is the opinion of the Board that the Petitioner has shown that denial of said Petition would constitute an unreasonable and arbitrary hardship for the following reasons:

- a) Petitioner has shown good faith by installing a \$125,000 gas/oil fired boiler. It is clearly evident that Petitioner has acted in good faith by trying to obtain gas or oil to run its boiler.
- b) J. R. Short Co. cannot operate without steam (R. 50).
- c) J. R. Short Co., its customers, and its employees would be seriously affected by a forced shutdown (R. 96-102).

II. Environmental impact

Very little evidence was presented as to environmental impact. Testimony mainly centered around wind direction in relationship to population centers. Testimony (unrebutted) (R. 104-107) shows that the location of the plant and the prevailing winds (west and southwest) would cause minimal particulate fallout on residential areas. The bulk of the residential areas are to the south of the plant. It is unfortunate that no environmental data are available. Agency calculations show a projected 2.22 pounds per million BTU particulate emission rate. Because of the sparsity of information and the feeling that J. R. Short will do everything it can to minimize usage of Illinois coal, the Board feels that this condition has been met.

The Agency has recommended a conditional variance upon findings of a hearing. All of the findings have been discussed above. The Agency requests a six-months variance. The Board feels that any variance granted should allow Petitioner to function normally throughout the upcoming grain drying season. The order was written as a ten-month variance to allow J. R. Short to complete its grain drying period without interruption. The main reason for this is that we can be relatively confident that Petitioner would much rather use gas or oil than it would coal. The order does contain conditions which would require Petitioner to report to the Agency and to insure that Petitioner uses all available #2 fuel oil.

The Agency further requests a compliance plan for bringing the coal-fired boiler into compliance. At this point this would be grossly unfair. Petitioner on the basis of sound engineering judgment has chosen, and in good faith installed, at the expense of \$125,000, a brand new gas/oil fired boiler. Furthermore, testimony (R. 95) shows that an additional expenditure of \$45,000 would be required to bring its existing coal-fired boiler into compliance. This would be spent in the face of a possible breakthrough of the gas/oil shortage, and said expenditure would be non-recoverable.

The other side of the coin must be considered. Although the Petitioner's problem is not self-imposed, the Board cannot and will not allow an emission source to continue polluting forever, no matter how severe the hardship. If at the end of the 10-month variance, Petitioner finds an extension necessary, the Board will very seriously consider the potential of environmental impact, and the possibility of imposing control systems at that time are very high.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that the J. R. Short Milling Company hereby be granted a variance from rules 3-3.122 and 2-2.53 until April 30, 1974, subject to the following conditions.

1. Petitioner shall continue to diligently pursue a supply of:
 - a) Natural gas
 - b) #2 fuel oil

2. Within thirty (30) days of the date of this order, Petitioner shall submit a report to the:
Environmental Protection Agency
Division of Air Pollution Control
Variance Section

2200 Churchill Road
Springfield, Illinois 62706

Said report shall contain, as a minimum:

- a) Results of efforts in regards to Condition #1.
 - b) The supply of #2 oil presently stored in its oil storage tanks.
 - c) The percent of its 1973 crop grain drying operations that it has accomplished, and its projected oil requirements for said operation.
3. Petitioner will burn fuels when available in the following order:
- a) Natural gas or:
 - b) #2 fuel oil
 - c) Eastern Kentucky low sulphur coal
 - d) Illinois coal
4. When, according to Condition 2 (c), J. R. Short Milling Company has enough reserve of #2 fuel oil to complete its drying requirements, and in addition a twelve (12) day supply of oil (no less than 18,000 gal.) over grain drying requirements, the Agency may at its discretion order J. R. Short to start up its gas/oil boiler until such time as its excess reserve of oil is depleted.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 11th day of October, 1973, by a vote of 4 to 0.

Christan L. Moffett

