

ILLINOIS POLLUTION CONTROL BOARD
April 3, 1997

IN MATTER OF:)
)
PETITION OF THE LOUIS BERKMAN) AS 97-5
COMPANY, d/b/a THE SWENSON) (Adjusted Standard - Air)
SPREADER COMPANY, FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE PART 215 SUBPART F)

ORDER OF THE BOARD (by K.M. Hennessey):

This case involves the petition of the Louis Berkman Company, d/b/a the Swenson Spreader Company (Swenson), for an adjusted standard. The rule from which Swenson seeks an adjusted standard is 35 Ill. Adm. Code 215.204(j), the emissions limit applicable to the painting operations at Swenson's plant in Lindenwood, Ogle County, Illinois. (Second Amendment (in the Nature of a Substitute) to the Petition for an Adjusted Standard at 2 (Second Amendment).)

Now pending before the Illinois Pollution Control Board (Board) is the Illinois Environmental Protection Agency's (Agency) motion to stay (motion), filed on March 31, 1997. Swenson filed a response opposing the motion on April 2, 1997 (Resp.). For the reasons stated below, the Board denies the motion.

PROCEDURAL HISTORY

On October 11, 1996, Swenson filed a petition for an adjusted standard from 35 Ill. Adm. Code 215.204(j). Swenson filed a first amended petition on November 4, 1996, a second amended petition on December 20, 1996 and a third amended petition on January 3, 1997.

The Agency filed a response to the petition, recommending that the Board deny the adjusted standard, on February 26, 1997. On March 5, 1997, the hearing officer set this matter for hearing on April 17, 1997.

The Agency also filed a separate enforcement action against Swenson on December 11, 1996. In the enforcement action, the Agency alleges that Swenson has violated 35 Ill. Adm. Code 215.204(j), the same provision for which Swenson seeks an adjusted standard.

On March 31, 1997, the Agency filed the motion for stay now at issue. In support of the motion, the Agency notes that the enforcement action involves the same regulation for which Swenson seeks an adjusted standard. The Agency states:

In general, the resolution of enforcement proceedings involve[s] a plan whereby the facility achieves compliance with applicable requirements. The [Agency] believes that

there are methods of compliance available to petitioner. Therefore, the non-compliance issues that are the subject of the adjusted standard in the instant case may be resolved in the enforcement proceeding filed by the Attorney General's office. If such a resolution occurs in the context of enforcement, an adjusted standard would no longer be needed for the facility as it would be in compliance with the requirements from which it is currently seeking an adjusted standard.

(Motion at 1-2.) Because of this possibility, the Agency states that a stay of the adjusted standard proceeding is appropriate and will avoid the "unnecessary and duplicative expenditure of resources." (Motion at 2.)

In its reply, Swenson sets forth six reasons in support of its opposition to the motion. First, Swenson notes that the Agency did not inform Swenson that the motion would be filed and did not seek Swenson's concurrence. (Resp. at 2.) Second, Swenson notes that the hearing has long been scheduled and that the adjusted standard petition is not the first of its kind filed before the Board. (Resp. at 3.) Third, Swenson notes that the adjusted standard petition was filed before the enforcement action and that Swenson has elected to pursue an adjusted standard as a means of coming into compliance with the regulation. (Resp. at 3-5.) Fourth, Swenson argues that it makes little sense to postpone the scheduled hearing in favor of an as yet unscheduled enforcement proceeding for which neither party is prepared. (Resp. at 5.) Fifth, Swenson argues that it needs the adjusted standard in order to meet specifications of various government agencies that are its customers. (Resp. at 5-6.) Sixth, Swenson argues that the "real reason" for the motion is the Agency's lack of "supportable technical and legal objections" to the adjusted standard petition. (Resp. at 6.)

DISCUSSION

The Board denies the motion for the following reasons. First, although the Agency speculates that the enforcement case will be resolved by a compliance plan, that outcome is not inevitable. The possibility that a compliance plan may be adopted is not a sufficient reason to stay the adjusted standard proceedings. This is especially true here given that the petition for adjusted standard was filed before the enforcement action and that preparations for the hearing on the adjusted standard have been underway for some time. Second, the Agency cites no precedent, rule or law that requires a stay. Third, to the extent that the Agency believes that Swenson can comply with the rule for which Swenson seeks an adjusted standard, it can present those arguments at the hearing on the adjusted standard petition.

If the Agency needs to briefly postpone the April 17, 1997 hearing for reasons other than those stated in the motion, the Agency should file a motion requesting such an extension before the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board