

ILLINOIS POLLUTION CONTROL BOARD

October 10, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 74-209
)
 AMERICAN CYANAMID COMPANY,)
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 Respondent.)
)
 AMERICAN CYANAMID COMPANY,)
)
 Petitioner,)
)
 vs.) PCB 74-227
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Jeffrey S. Herden and Richard Cosby, Assistant Attorneys General
for the EPA
Ronald Cracas, Attorney for American Cyanamid Company

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

This Opinion and Order involve an enforcement action (PCB 74-209) and a petition for variance (PCB 74-227) which have been consolidated for disposition. The enforcement action commenced on June 5, 1974 when the Agency filed its Complaint alleging that American Cyanamid Company had operated a sulfuric acid plant since December 1, 1972 without an operating permit in violation of Section 9(b) of the Environmental Protection Act and Rule 103 of the Air Pollution Control Regulations. American responded 9 days later by seeking variance from Rule 204(f)(2) of the Regulations in order to allow sufficient time to install and operate an acid mist eliminator on the sulfuric acid plant.

Thereafter the Agency filed a Motion to Consolidate these two cases. On August 8, 1974 the Board granted consolidation on the condition that American waive its right to a decision on PCB 74-227 within 90 days as the Act provides. American informed the Hearing

Officer at a public hearing of its intention to not waive this right and the Hearing Officer so advised the Board by letter dated August 30, 1974.

On September 12, 1974 the Board denied the variance request because of American's failure to provide evidence on the issue of hardship and American's failure to explain the long delay in meeting the regulatory deadline.

American Cyanamid informed the Board on September 18, 1974 that it had scheduled "a prompt, orderly and complete shutdown" of the plant "in conformity with the Pollution Control Board's ruling in this matter". In this filing, American stated that an explanation of its failure to meet the compliance deadline had been submitted to the Board in the Stipulation and Proposal for Settlement "in the companion case of PCB 74-209". The explanation was not filed in PCB 74-227.

The Board Order of September 12, 1974 did not order American Cyanamid to shut down its sulfuric acid plant. A variance denial does not mandate a shut down of any operation. The Stipulation and Proposal for Settlement had not been submitted to the Board by September 12, 1974 and the copy provided by American was neither dated nor signed. American's refusal to waive the 90 day provision prevented a consolidation of the two cases. Had American consented to this waiver, the Board could have considered any explanation offered by American that was in the record of the consolidated proceedings. The Board finds that American shut down this plant of its own volition and any loss resulting from the shut down was of American's own making.

American operates a 150 ton/day (12,500 lb/hr.) contact sulfuric acid plant in Joliet. The plant, which is located adjacent to a residential area, is limited under Rule 204(f)(2) to emissions of 0.15 lbs. acid mist/ton of acid produced. Stack tests conducted by American in 1973 showed a sulfuric acid mist emission rate of 1.5 lbs. acid mist/ton of acid produced. American is going to install a Frink Fibre Bed High Efficiency Mist Eliminator on the process at a point before the discharge stack. The \$133,500 mist eliminator was ordered on May 17, 1974 and delivery was promised by September 20, 1974.

The Board on September 27, 1974 adopted two additional Orders in these proceedings. The first Order allows reconsideration of our Order of September 12, 1974 in PCB 74-227 and the second Order consolidated these two cases. These Orders were a direct result of the filing by the parties on September 27, 1974 of a Stipulation and Proposal for Settlement. This Opinion and Order shall deal with the consolidated cases as outlined in the Stipulation.

In September 1972 American personnel decided they needed more testing in order to obtain data required for permit application. A written request was submitted to the Agency on October 6, 1972 seeking a delay until January 31, 1973 for the filing of permit application. When the testing equipment arrived in damaged condition, American requested an additional delay until March 31, 1973. The Agency replied that it had no authority to grant the new request and suggested that American seek a variance.

However, American continued to seek operating permit rather than variance. American has no explanation for proceeding in this fashion other than a misunderstanding by American personnel of the distinction between an application for permit and an application for variance. The Board finds this to be a feeble excuse for not seeking the variance.

Installation of the mist eliminator has in all probability been completed. American indicated that a fan impeller required to operate this plant with the new control equipment would be available for installation on or about October 4, 1974.

The Proposed Settlement requires American to:

- a) pay a civil penalty of \$2,000 in settlement of the enforcement action,
- b) post a performance bond of \$30,000,
- c) submit bi-weekly progress reports,
- d) expeditiously complete installation of the mist eliminator,
- e) perform a stack test within 30 days of completion of the installation and,
- f) apply for and make all reasonable efforts to obtain permits.

American is to be granted a variance from Rule 204(f)(2) and immunity from further prosecution under PCB 74-209. Settlement is conditioned upon complete approval by the Board of all stipulations conditions and provisions without change or modification.

We accept this settlement. We would have permitted monthly progress reports in lieu of bi-weekly reports, but nevertheless, find the settlement to be just and equitable in light of the facts in these proceedings.

ORDER

It is the Order of the Pollution Control Board that:

1. American Cyanamid Company is granted a variance from Rule 204(f)(2) of the Air Pollution Control Regulations for its Joliet Sulfuric Acid plant until December 1, 1974 for the purpose of installing an acid mist eliminator designed to permit American Cyanamid to achieve compliance with Rule 204(f)(2).
2. American shall seek to expedite completion of installation of the acid mist eliminator in order to achieve compliance with Rule 204(f)(2).
3. Within 30 days of completion of the mist eliminator installation, American shall have stack tests performed by an independent testing company. American shall notify the Agency five days prior to the stack test indicating the time and place of said test and shall allow Agency personnel to observe said test if they so desire.
4. American shall, by November 11, post a bond in the amount of \$30,000 in a form acceptable to the Environmental Protection Agency, such bond to be forfeited in the event American fails to install and operate the mist eliminator. Bond shall be mailed to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
5. American shall submit bi-weekly progress reports to the Environmental Protection Agency. Said progress reports shall commence on October 24, 1974 and shall provide details of American's progress towards completion of the mist eliminator installation program. Said reports shall be mailed to: Environmental Protection Agency, Division of Air Pollution Control, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706.
6. American Cyanamid shall pay to the State of Illinois by November 1, 1974 the sum of \$2,000 as a penalty for the violation admitted in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
7. American shall expeditiously apply for and make all reasonable efforts to obtain all necessary permits from the Environmental Protection Agency.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 10th day of October, 1974 by a vote of 5 to 0.

Christan L. Moffett