

ILLINOIS POLLUTION CONTROL BOARD  
November 6, 1975

CORPS OF ENGINEERS, )  
ROCK ISLAND DISTRICT, )  
 )  
Petitioners, )  
 )  
v. ) PCB 75-265  
 )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondents. )

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

On July 7, 1975, the United States Army Corps of Engineers, Rock Island District, (Corps), filed a Petition for Variance from Rules 102 and 205 of Chapter 2: Air Pollution, of the Pollution Control Board, (Board), Rules and Regulations. PCB Regs., Ch. 2, Rules 102, 205. This Variance was sought by the Corps to allow the painting of various lock gates at Lock & Dam 13, (2 miles north of Fulton, Illinois), and Lock & Dam 15, (at Rock Island, Illinois), on the Mississippi River. The hydrocarbon emissions from this painting operation will exceed the eight pounds per hour limit under Rule 205.

On July 10, 1975, the Board entered an Interim Opinion and Order granting the Corps until September 19, 1975, to provide further information on the effect of the United States Supreme Court Decision in Train v. N.R.D.C., 43 U.S.L.W. 4467 (U.S., April 16, 1975). Information on the effect of the possible grant of this Variance on the achievement or maintenance of national ambient air quality standards was received by the Board on September 22, 1975.

The Environmental Protection Agency submitted its Recommendation in this matter on October 23, 1975. No hearing was held.

We agree with the Agency that this Variance must be dismissed for lack of a definite compliance plan, and in addition find that the information submitted to deal with the question of Train v. N.R.D.C., supra, is inadequate and requires dismissal.

First, on the matter of compliance, the Corps states only that the Army Construction Engineering Research Laboratory at Champaign, Illinois, ". . . is developing and testing substitute paint formulations . . . that . . . will be available in about 12 months." The Corps also notes that one substitute paint was tried in 1972, but rejected because it may be causing "peripheral neuropathy" in humans. The compliance plan stated here is simply not of the definitive nature which we need to assure ourselves that the offending paints covered in this Petition will not be the subject of another Variance next year, or that these paints simply cannot be altered sooner and still meet the Corps' stringent quality control standards.

Second, on the issue of Train, the information offered by the Corps is not sufficient to show that the emissions from the Corps' painting activities will not cause or contribute to the high ozone levels that the Corps admits occur in the area which may be affected by such painting, during the period covered by the Corps' proposed work schedule. The additional allegation that the painting will take place in the middle of the river, away from populated areas, is not enough to overcome the deficiency.

We sympathize with the Corps' problems in this case; they are subject to both time and materials constraints of a serious nature. However, we are unable to grant the Variance requested until the deficiencies noted above have been resolved. We shall dismiss without prejudice, and shall allow the Corps to refile a new Variance Petition addressing those issues.

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 Variance Petition in this matter be dismissed without prejudice.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6<sup>th</sup> day of November 1975 by a vote of 3-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board