

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

W.R. GRACE & CO. - CONN.,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 96-193
(Air Variance)

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

**JOINT MOTION TO MODIFY ILLINOIS POLLUTION CONTROL BOARD
ORDERS DATED FEBRUARY 6, 1997 AND MARCH 20, 1997**

NOW COME Petitioner, W.R. GRACE & CO. - CONN. ("Grace" or "Petitioner"), by its attorneys, HODGE & DWYER, and THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency" or "Respondent"), pursuant to 35 Ill. Admin. Code 101.241, and hereby request the Illinois Pollution Control Board ("Board") to modify its February 6, 1997 Order, as well as its March 20, 1997 Order. In support of this Motion, the parties state as follows:

1. On or about March 14, 1996, Grace filed a Petition for Extension of Variance for a period of one year from the compliance date for the testing requirements in paragraph 4 of the Board's March 16, 1995, Order in W.R. Grace v. IEPA, PCB 94-328, and special condition 6(c) of Grace's construction permit for a catalytic oxidizer.

2. On June 14, 1996, Grace suffered an explosion and fire in its solvent mixing area, which resulted in significant damage to the catalytic oxidizer and the associated ventilation system. On September 9, 1996, Petitioner filed its Amended Petition for Extension of Variance and Supplemental Request for Variance in this matter.

3. On October 18, 1996, the Agency filed its Recommendation in this matter, supporting Petitioner's variance requests.

4. On October 25, 1996, the hearing in this matter was held at the James R. Thompson Center, 100 West Randolph Street, Room 11-500, Chicago, Illinois.

5. Petitioner filed its Post-Hearing Brief in Support of Request for Variance Extension and Supplemental Request for Variance ("Post-Hearing Brief") on November 8, 1996. Attached to the Petitioner's Post-Hearing Brief as Exhibit 1 was a proposed Compliance Plan. Respondent filed its Post-Hearing Reply Brief ("Reply Brief") on November 15, 1996, in which it concurred with the proposed Compliance Plan in Petitioner's Post-Hearing Brief.

6. On December 16, 1996, the parties filed a Joint Motion to Amend Proposed Compliance Plan, removing the provisions concerning the equivalent alternative control plan from the proposed Compliance Plan.

7. On February 6, 1997, the Board issued its Order in this proceeding, granting Petitioner's Request for Variance Extension and Supplemental Request for Variance. Pages 13 - 15 of the Board's Order set forth the Compliance Plan as adopted by the Board.

8. The parties noticed certain differences between the language of the Compliance Plan as adopted by the Board, and the language of the Compliance Plan as proposed by the parties. On March 11, 1997, the parties filed a Joint Motion to Clarify Illinois Pollution Control Board Order Dated February 6, 1997

("Joint Motion to Clarify"). In that Joint Motion to Clarify, the parties requested changes be made to the Compliance Plan, as adopted by the Board, to restore the Compliance Plan to its original language, thereby clarifying the intent of the Compliance Plan.

9. The Board granted the Joint Motion to Clarify on March 20, 1997.

10. Meanwhile, the parties completed the first two steps of the compliance plan, concerning the submittal of the study outline, and Agency approval of the outline. See, Compliance Plan at paragraph A(1)-(3).

11. During the progress of the control device study, Grace timely submitted its monthly progress reports documenting progress made on the studies as well as monthly emissions estimates. See, Compliance Plan at paragraph B.

12. Grace submitted the conclusions reached during the course of the control device investigations to the Agency on July 1, 1997. Grace's consultant, Versar, determined through the control device investigation that there is no reasonable control for the solvent mixers at Grace's facility, pursuant to Subpart QQ, i.e., no control option was found to be technically feasible or reasonably available due to cost-effectiveness.

13. By letter dated July 14, 1997, the Agency responded to the control study report with a few technical questions. The parties discussed these questions during a conference call on July 15, 1997. The Agency followed the conference call with a

letter dated July 18, 1997, which included a request for more information on several technical issues as to the control study report.

14. Grace provided further information to the Agency in response to its July 14, 1997 and July 18, 1997 letters, on July 25, 1997. The parties hope that, with the additional information, the Agency can reach a determination as to whether it concurs with or rejects the control study report, by July 31, 1997.

15. In any event, Grace will not be able to meet the August 1, 1997 deadline for initiation of a purchase order for control equipment, nor in all likelihood, the deadlines for control device installation, operation and testing. As stated above, the control study did not recommend pursuit of any control device option. Grace would not be in a position to issue a purchase order for control equipment, or install, operate and test the equipment, unless both parties agreed that a particular control device is appropriate. Given the developments to date, Grace certainly could not accomplish the tasks required by paragraph A(5) of the compliance plan, on or before the dates specified in that paragraph.

16. The compliance plan does not contemplate the eventuality of a control study report recommending that no control device option is feasible/reasonable. As stated herein, the parties are currently working together to determine what should be done in response to the report's conclusions, including potential

applicability of different regulatory provisions and/or options for regulatory relief.

17. The parties therefore request that the Board modify paragraph 5 of the compliance plan, to allow the parties time to explore the available options in light of the results of the control study report. The parties are willing to report to the Board as to the status of their discussions by October 1, 1997.

WHEREFORE, for the above and foregoing reasons, Petitioner, W.R. Grace & Co. - Conn., and Respondent, the Illinois Environmental Protection Agency, hereby respectfully request the Board to grant this Motion to Modify its February 6, 1997 Order, as well as its March 20, 1997 Order, in accordance with the matters set forth herein.

Respectfully submitted,

W.R. GRACE & CO. - CONN.,
Petitioner,

By: Zalonna Oliver
One of Its Attorneys

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Respondent,

By: Christina Archer
One of Its Attorneys *WLD*

Dated: July 28, 1997

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WRGR:001/Fil/WRGR-001 Mtn to Modify

CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, certify that I have served the attached JOINT MOTION TO MODIFY ILLINOIS POLLUTION CONTROL BOARD ORDERS DATED FEBRUARY 6, 1997 AND MARCH 20, 1997 upon:


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

by AirBorne Express in Springfield, Illinois on July 28, 1997.

Deborah L. Frank, Esq.
Board Hearing Officer
Illinois Pollution Control Board
608 South Prospect Avenue
Champaign, Illinois 61820

Christina L. Archer, Esq.
Assistant Counsel
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by depositing said documents in the United States Mail in Springfield, Illinois on July 28, 1997.


N. LaDonna Driver

WRGR:001/Fil/WRGR-CC1.70P - Mtn to Clarify2