

ILLINOIS POLLUTION CONTROL BOARD
May 3, 1972

RICHARDSON CO.)
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 v.) # 72-41
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

Richardson asks a variance approving an Air Contaminant Emission Control Program (ACERP) for a phenolic laminate plant in DeKalb. The ACERP date approved by the old Air Pollution Control Board was December 31, 1972, and Richardson affirms its present need for that much time. EPA urges us to allow only until September 9, 1972, but does not say why. The question is open because of our decision in EPA v. Commonwealth Edison Co., #70-4 (Feb. 17, 1971), that ACERPS were variances subject to annual renewal. We asked for additional information as to the proper completion date (Richardson Co. v. EPA, #72-41, April 11, 1972) and received details from the company, nothing from the Agency. The Agency has, however, filed a complaint against Richardson for the same transactions, and a hearing in that complaint will soon be held (#72-144).

We have reaffirmed compliance schedules set by our predecessor where the evidence is the petitioner cannot accelerate compliance. In the absence of rebuttal, Richardson's explanation of its time needs is generally persuasive with one exception on this score. The company states that it is presently prepared to place a purchase order for the necessary equipment and that it "intends to execute such order if granted sufficient time" to complete the installation. The implication seems to be that Richardson has delayed placing the order pending the outcome of this case. If so, this is unacceptable. People are supposed to go full steam ahead while seeking a variance. It is clear Richardson must comply with the pollution laws, and it does not help its case for a special time exemption by putting its action off while litigating. Others similarly situated have demonstrated their good faith by getting to work at once. E.g., A.E. Staley Mfg. Co. v. EPA, #71-174 (September 30, 1971).

We conclude that the need for some more time to complete the installation has been shown, and we do not read the Agency's reference to neighborhood odors as suggesting that the nuisance is so severe as to require the hardship of an immediate shutdown, since EPA asks that we grant a variance. We cannot, however, conclude on the facts before us that December 31 is the correct date because of the question whether Richardson has delayed while waiting for our decision. We therefore grant the variance until September 9, as urged by EPA, without prejudice to possible money penalties for delay as sought in the pending enforcement proceeding and subject to extension in the event that adequate proof of diligence is made in defense in that proceeding.

ORDER

Richardson Co. is hereby granted a variance allowing hydrocarbon emissions from its phenolic laminate treaters in excess of otherwise applicable limits, as follows:

- a. The existing afterburner on one treater shall be rebuilt and in full operation by July 1, 1972;
- b. The other treaters shall be equipped with fully operative afterburners by September 9, 1972, unless this variance is extended by the Board.

This variance is subject to the following conditions:

1. Within 35 days after receipt of this order, Richardson shall post with the Agency a bond equal to the cost of its remaining pollution control program, to assure compliance with this order;
2. All necessary Agency permits shall be obtained;
3. Progress reports shall be filed with the Agency and with the Board every two months starting June 3, 1972;
4. Independent stack tests shall be performed within 30 days after completion of each afterburner and the Agency notified at least 10 days prior to such tests.

This variance is without prejudice to the request for money penalties in the pending enforcement proceeding #72-144.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 3rd day of May, 1972, by a vote of 4-0.

Christan L. Moffett