

ILLINOIS POLLUTION CONTROL BOARD
April 12, 1990

IN THE MATTER OF:)
)
PETITION OF LACLEDE STEEL)
COMPANY FOR ADJUSTED STANDARDS)
FROM 35 ILL. ADM. CODE 302.201) AS 90-3
302.208, 302.210, AND SUBPART) (Adjusted Standard)
F, PROCEDURES FOR DETERMINING)
WATER QUALITY CRITERIA)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a motion to dismiss Petitioner's adjusted standard petition filed March 26, 1990 by the Illinois Environmental Protection Agency ("Agency"). On April 2, 1990, Petitioner filed its reply requesting that the Agency's motion be denied.

On March 5, 1990 Petitioner filed a petition for adjusted standard with the Board for relief from Board regulations governing mixing zones; numeric standards for cyanide, cadmium, lead, chromium (hexavalent), silver, and total dissolved solids; and narrative standards and whole effluent toxicity standards, as those rules were amended by the Board in the Toxics Control Regulatory Proceeding, R88-21(A) (January 25, 1990, effective February 13, 1990).

In its motion, the Agency requests the Board dismiss this petition as "unripe, untimely, and inadequate under the requirements of 35 Ill. Adm. Code 106.705." In support of its motion, the Agency discusses several areas in which it believes the petition contains insufficient information, including alleged lack of information on compliance alternatives and corresponding costs and efforts necessary to achieve the proposed adjusted standard and corresponding costs as required by Section 106.705 (e) and (f).

Petitioner challenges the Agency's contentions, stating that its petition meets all regulatory requirements for petition contents. Petitioner points to Section 106.705(1), which allows that for initially filed petitions, a petitioner need not fullfill an informational requirement which it believes is not applicable or unduly burdensome, provided that an explanation is given in the petition. Petitioner then admits that it did not present any information regarding the cost of compliance alternatives nor any costs of compliance with a proposed adjusted standard, due to its desire to file the petition within the statutory time frame for a stay of the effective date of the R88-21(A) rules, as provided by Ill. Rev. Stat. 111½, par.

1028.1(e). Petitioner submits that it may develop the information required under Section 106.705(e) and (f) in conjunction with its variance proceeding involving these same regulations (PCB 90-29), and can provide information as it is developed. Laclede also states that since some of the requirements of the new rules include actions to be completed in the future, such as determinations of mixing zones, that information can also be submitted as it becomes available. Laclede also recites some information that it can currently supply, if so desired. Lastly, Laclede asks in the alternative that should the Board believe that more information is required, that the Board issue an order seeking more information rather than dismissal, consistent with Section 106.705.

Upon review of the alleged deficiencies and response by Petitioner, the Board finds the filing of the petition in this instance is indeed premature. The Board finds it is not appropriate to order more information on this petition since Petitioner admits that it does not presently have basic information on costs and compliance alternatives and may not have such information for some time to come, perhaps even after studies are completed in September 1990 in conjunction with its pending variance petition (PCB 90-29). Therefore, were the Board to request additional information, there is no date certain which the Board could order and be assured of receiving the information sought. Lastly, the impetus behind the filing of this petition without the information was apparently to file within 20 days of the effective date of the toxics control rules to achieve the benefit of the automatic stay provided in Section 28.1(e) of the Act. The Board notes that Section 28.1(e) provides for an automatic stay of some newly effective rules if a petition for adjusted standard is filed within 20 days of the effective date of the rules, but specifically excludes rules implementing an NPDES program. The toxic control rules implement an NPDES program, and can accordingly be stayed only by Order of court. The Board finds no reason to keep this docket open indefinitely.

The Agency's motion to dismiss is accordingly granted. The Petition for Adjusted Standard filed March 5, 1990 by Laclede Steel Company is hereby dismissed.

IT IS SO ORDERED.

Board Member J.D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17th day of April, 1990, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board