

ILLINOIS POLLUTION CONTROL BOARD
April 2, 1998

W.R. GRACE & CO. - CONN.,)	
)	
Petitioner,)	
)	
v.)	PCB 96-193
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a "Joint Motion to Modify Illinois Pollution Control Board Order Dated August 7, 1997," (motion) filed on behalf of petitioner, W.R. Grace & Co. - Conn (Grace) and respondent, the Illinois Environmental Protection Agency (Agency). This motion concerns Grace's facility located at 6050 West 51st Street, Chicago, Cook County, Illinois. The parties seek a four month extension until August 1, 1998, of Grace's deadline for compliance with certain regulations for the control of emissions of volatile organic material (VOM).

Grace's Chicago facility has been the subject of previous VOM variances and variance extensions. On February 6, 1997, the Board issued Grace an extension of variance originally granted by the Board in W.R. Grace v. IEPA (March 16, 1995), PCB 94-328. The Board's February 6, 1997, order granted Grace a variance from various Board VOM regulations set forth in 35 Ill. Adm. Code 218. The Board subsequently modified that order at the parties' request on March 20, 1997, to clarify the compliance conditions contained within the order. On August 7, 1997, the Board granted the parties' request of July 29, 1997, to extend the compliance deadline of August 1, 1997, in which Grace was to initiate purchase orders for control equipment, install control devices, and conduct operations and testing. In Paragraph A(5) of the August 7, 1997, order, the Board ordered that "Grace shall complete all purchase orders, installation, and testing of control equipment on or before May 15, 1998." In Paragraph D, the Board ordered that "By April 1, 1998, Grace shall comply with 35 Ill. Adm. Code 218, Subpart QQ, and by May 15, 1998, with Subpart UU."

In support of their current motion to extend the variance until August 1, 1998, the parties discuss progress made toward compliance since the Board's last order. Upon receiving further technical information supplied by Grace, the Agency advised Grace that there was no control option that is cost-effective for meeting the compliance plan set forth in the variance. Mot. at 5. Accordingly, on November 19, 1997, the parties filed a petition for site-specific rulemaking to amend Subpart QQ. See In the Matter of: Petition of W.R. Grace & Co. - Conn. and Illinois Environmental Protection Agency for Site-Specific Air Regulation: 35 Ill.

Adm. Code 218.940(h) (December 18, 1997), R98-16. The proposal adds a new Section 918.940(h) to 35 Ill. Adm. Code 218.Subpart QQ, which would exempt the solvation mixer at Grace's facility from the 81% control requirements for VOM emissions. The petition was accompanied by a request that the Board expedite the rulemaking.

The Board issued a first notice opinion and order in R98-16 on December 18, 1997, and, thereafter conducted a hearing on January 21, 1998. Pursuant to the new requirements of Public Act 90-489, effective January 1, 1998, the Board requested that the Department of Commerce and Community Affairs (DCCA) conduct an economic impact study (EcIS) in this matter in late January, 1998. On January 26, 1998, DCCA issued a letter to the Board indicating that it would not be conducting an EcIS in this fiscal year. The Board held a hearing on DCCA's decision on March 30, 1998.

Due to the parties' filing of R98-16 on November 19, 1998, and the additional requirement of conducting an EcIS hearing, the Board could not reach a final decision on the merits of the parties' site-specific proposal by April 1, 1998, or May 15, 1998, the deadlines for compliance with the Board's August 7, 1997, order. The Board presently anticipates that it may reach a final decision in R98-16 in July, 1998.

The Board does not usually extend the final compliance dates in variance orders upon motion, but instead requires the filing of a new petition for variance. 35 Ill. Adm. Code 104.123. However, the circumstances of this case, which involves changing regulatory requirements are out of the ordinary, and the parties have shown diligence in their attempts to complete the R98-16 rulemaking prior to the scheduled termination of the PCB 96-193 variance. The parties' motion to modify is hereby granted. Accordingly, the Board amends Paragraphs A(5) and (D) of the August 7, 1997, order, as well one other reference in the variance order, to change the final compliance dates from April 1, 1998, and May 15, 1998, to August 1, 1998. As the parties have not requested any change, the October 1, 1997, progress report date remains the same in Paragraph (A)5 of the order. For the convenience of the parties, the Board sets forth the order, as modified, in its entirety.

ORDER

For its facility located at 6050 West 51 st Street, Chicago, Cook County, Illinois, petitioner, W.R. Grace & Co. - Conn. (Grace) is hereby granted a two-year variance extension of variance from the Board's testing requirements under 35 Ill. Adm. Code 218.106(c), 218.940(b), 218.946, 218.948, and 218.Subpart UU as to its solvent mixer loading operation. This variance shall commence retroactively on March 16, 1996, and terminate on March 16, 1998. Grace is also granted a variance from the testing requirements under 35 Ill. Adm. Code 218.106(c), 218.940(b), 218.946, 218.948, and 218.Subpart UU as to its catalytic oxidizer. This wholly retroactive variance shall commence on March 16, 1996, and terminate on October 25, 1996. Finally, Grace is granted a variance from the Board's emission control requirements under 35 Ill. Adm. Code 218.Subpart QQ and the related recordkeeping and reporting requirements under 35 Ill. Adm. Code 218.Subpart UU, and Section 9(b) of the Environmental Protection Act (Act) as to its solvent mixer loading operations and its catalytic

oxidizer. 415 ILCS 5/9(b) (1996). This variance shall commence retroactively on August 15, 1996, and terminate on August 1, 1998.

This grant of variance is subject to the following conditions:

- A. Grace shall submit by January 15, 1997, detailed outlines for studying other possible methods of compliance, as set forth in subsection 1 below.
 1. The outlines shall detail studies of catalytic oxidation, enclosed flare and other options, as appropriate for control devices, pursuant to the following:
 - (a) A catalytic oxidizer study shall, at a minimum, include information as to feasibility and safety concerns regarding the use of the following:
 - (1) VOM monitors, or a series of monitors in the duct work leading to the catalytic oxidizer;
 - (2) Warning systems capable of diverting emissions that exceed the lower explosive limit to an emergency bypass stack;
 - (3) The installation of rupture discs and flame arresters in the duct work leading to the catalytic oxidizer; and,
 - (4) The effects of installation of a dilution box in the duct work leading to the catalytic oxidizer.
 - (b) An enclosed flare study shall provide information on all aspects of the use of a flare for emissions control.
 - (c) Grace may also submit outlines for any other control device it wishes to study.
 2. Each such outline shall include all test methods and procedures to be used during the studies, all appropriate emission factors and a timeframe for completion of the studies.
 3. Each such outline shall be subject to modification and approval by the Agency prior to commencement of the studies. The studies undertaken by Grace will include consideration and evaluation of all matters requested by the Agency to be included

in the scope of studies. The Agency shall complete evaluation and approval of each outline no later than February 1, 1997.

4. Grace shall submit the conclusions reached during the course of the investigations, including all supporting documentation, test methods and procedures to the Agency as they become available, but in any event, no later than July 1, 1997. Upon receipt, the Agency shall evaluate the conclusions based on the supporting documentation and either concur or reject the proposed compliance method as expeditiously as possible, but in any event, no later than July 15, 1997.
 5. In the event the Agency concurs with the proposed compliance method, Grace shall complete all purchase orders, installation, and testing of control equipment on or before August 1, 1998. In the event that the Agency concurs with a finding that no control device option is found to be technically feasible or economically reasonable, Grace shall submit on or before October 1, 1997, to the Board a joint progress report with the Agency which states the status of such discussions with the Agency, as well as any resolutions that have been reached.
- B. During the pendency of the variance, Grace shall submit to the Agency by the first of each month, monthly progress reports documenting progress made on the studies delineated by Paragraph A above, as well as monthly emissions estimates. These progress reports, outlines and studies shall be submitted to:
- Illinois Environmental Protection Agency
Bureau of Air
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Attn: Compliance Section Manager
- and
- Illinois Environmental Protection Agency
Bureau of Air
1701 First Avenue
Maywood, Illinois 60153
Attn: Compliance Section Manager
- C. Grace shall submit all required construction and operating permit applications, including an amendment to its pending Clean Air Act Permit Program (CAAPP) application to the Agency's Permit Section Manager at the Springfield address

in Paragraph B, as required to meet all applicable regulatory requirements under the Act and the deadlines in this variance.

- D. By August 1, 1998, Grace shall comply with 35 Ill. Adm. Code 218.Subpart QQ and Subpart UU.

IT IS SO ORDERED.

If Grace chooses to accept this variance subject to the above order, within forty-five days of the grant of variance, or on or before May 17, 1998, Grace must execute and forward the attached certificate of acceptance and agreement to:

Tina Archer
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind Grace to all terms and conditions of the granted variance. The forty-five day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within forty-five days renders this variance void. The form of the certificate is as follows:

CERTIFICATE

I (We), _____, hereby accept and agree to be bound by all terms of the Order of the Pollution Control Board in PCB 96-193, April 2, 1998.

Petitioner

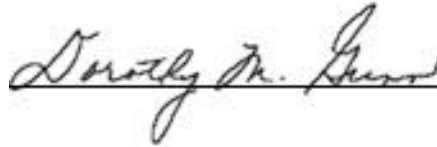
Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 2nd day of April 1998, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board