

ILLINOIS POLLUTION CONTROL BOARD

February 17, 2000

THE C.P. HALL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 00-54
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

JEFFREY S. SRULOVITZ, SEYFARTH, SHAW, FAIRWEATHER & GERALDSON,
APPEARED ON BEHALF OF PETITIONER; and

DEBORAH J. WILLIAMS, ASSISTANT COUNSEL, APPEARED ON BEHALF OF
RESPONDENT.

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

This matter comes before the Board upon a petition for variance filed by C.P. Hall Company (C.P. Hall). C.P. Hall seeks variance from the Board's air pollution control and monitoring requirements for batch operations pertaining to C.P. Hall's chemical production and processing facility in Bedford Park, Cook County, Illinois. C.P. Hall requests the variance from December 31, 1999, to December 2000.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1998)). The Board is responsible for granting variance from Board regulations whenever it is found that immediate compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. 415 ILCS 5/35(a) (1998). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f) (1998). The Agency is also charged, among other matters, with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (1998).

For reasons explained below, the Board finds that C.P. Hall has presented adequate proof that immediate compliance with the Board's regulations would result in the imposition of an arbitrary or

unreasonable hardship. Accordingly, the Board grants the variance request from February 17, 2000, to December 31, 2000, subject to conditions set forth in the attached order.¹

BACKGROUND

C.P. Hall filed a petition for variance on September 23, 1999.² On October 26, 1999, C. P. Hall filed a motion to amend its petition to correct a mathematical error, accompanied by an amended petition (Am. Pet.). The Board grants the motion to amend the petition. On December 21, 1999, the Agency filed its recommendation to grant C.P. Hall's requested variance relief, subject to certain conditions. C.P. Hall waived hearing on January 6, 2000.

C.P. Hall seeks variance with respect to emissions from its chemical production and processing facility located in Bedford Park, Cook County, Illinois. Am. Pet. at 1. The facility is a batch manufacturer and produces over 125 different products. Am. Pet. at 3. The facility uses acids and alcohols or glycols to manufacture esters and polyesters. Am. Pet. at 1. During the process of manufacturing the esters and polyesters, raw materials are placed in reactors. Rec. at 3. Hot oil is used as the heat source which causes a reaction between organic acid and alcohol or glycol. Rec. at 3. The exhaust from the reactor trains goes into one of eleven condensers and is discharged into the atmosphere through a common vent header. Rec. at 3. Volatile organic material (VOM) emissions from the reactor trains are emitted at an average rate of 21 lb/hr. Am. Pet. at 1. The facility is classified as a major source of VOM emissions and hazardous air pollutants under the Clean Air Act (42 U.S.C. Sec. 7401 *et. seq.*). Rec. at 3.

REGULATORY FRAMEWORK

Nature of Variances

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35 (a) (1998). Furthermore, the burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. Pollution Control Board, 135 Ill. App. 3d 343, 481 N.E. 2d 1032 (1st Dist. 1985). Only with such a showing can the claimed hardship rise to the level of unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations, and compliance is sought regardless of the hardship which the task of eventual compliance presents an individual polluter. Monsanto Co. v. Pollution Control Board, 67 Ill.

¹ The Agency notes that C.P. Hall does not indicate the exact date in December 2000 for termination of the variance. Recommendation (Rec.). at 9. The Agency assumed C.P. Hall intended to request a variance until December 31, 2000. Rec. at 9.

² Also on September 23, 1999, C.P. Hall filed a related second petition, PCB 00-53. The Board dismissed PCB 00-53 on January 6, 2000, at C.P. Hall's request.

2d 276, 287, 367 N.E. 2d 684, 688 (1977). Accordingly, except in certain special circumstances, a variance petition is required, as a condition to a grant of variance, to include a plan which is reasonably calculated to achieve compliance within the terms of the variance.

Regulations at Issue

Pursuant to authority granted under the Act, the Board has established limits for various types of air emissions. Among these limits are control requirements on batch operations, which are found at 35 Ill. Adm. Code 218.501, one of the Sections from which C.P. Hall seeks variance. Section 218.501(a) provides:

- a) Every owner or operator of a single unit operation with an average flow rate, as determined in accordance with Section 218.502(b) of this Subpart, below the flow rate value calculated by the applicability equations contained in Section 218.500(e) of this Subpart, shall reduce uncontrolled VOM emissions from such single unit operation by an overall efficiency, on average, of at least 90 percent, or 20 ppmv, per batch cycle. 35 Ill. Adm. Code 218.501(a).

The Board has also established monitoring requirements for batch operations, found at 35 Ill. Adm. Code 218.504, and from which C.P. Hall seeks variance. Section 218.504(d) reads:

- d) Every owner or operator using a condenser to comply with Section 218.501 of this Subpart shall install, calibrate, maintain, and operate, according to manufacturer's specifications, the following:
 - 1) A condenser exit temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1 percent of the temperature being monitored expressed in degrees Celsius; or
 - 2) A VOM monitoring device used to indicate the concentration of VOM such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder. 35 Ill. Adm. Code 218.504(d).

C.P. Hall became subject to both of these requirements, which are part of 35 Ill. Adm. Code Subpart V, on December 31, 1999. Am. Pet. at 2. This Board adopted Subpart V in rulemaking R94-33, on May 4, 1995. Rec. at 4. Subpart V requires 90% overall VOM control efficiency. Prior to the adoption of Subpart V, C.P. Hall was subject to 35 Ill. Adm. Code Subpart RR, which requires 81% VOM control efficiency. Rec. at 4, 6.

C.P. Hall's most recent stack test showed 91.73% overall efficiency.³ Rec. at 4. C.P. Hall requests the variance because it is concerned it "may not be able to consistently meet the Section 218.501(a) 90% reduction requirements of Subpart V without installing a larger condenser and without substantial modification to its cooling systems for condensers, and cannot meet the Section 218.504(d) continuous monitoring requirements because its existing condensers do not have the specified VOM or temperature monitoring devices." Am. Pet. at 3.

COMPLIANCE PLAN

Instead of retrofitting the facility's current condensers to comply with the Subpart V, C.P. Hall proposes to install a new thermal oxidizer fitted with a continuous temperature monitor to achieve the Section 218.501(a) requirements. Am. Pet. at 4, Rec. at 14. C.P. Hall suggests that using the thermal oxidizer would allow C.P. Hall to both achieve compliance with the 90% efficiency standard and also "over-control" to an approximate 98% reduction of emissions. Am. Pet. at 4. C.P. Hall also notes that the thermal oxidizer would allow C.P. Hall to satisfy the applicable thermal oxidizer monitoring requirements of Section 218.505(c)(1), instead of the 218.504(d) requirements which apply to condensers.

The thermal oxidizer equipment design, purchase, delivery, installation, and testing will take approximately 19 months and cost \$307,000. Am. Pet. at 5. C.P. Hall argues when the Agency determined C.P. Hall would be subject to Subpart V, C.P. Hall only had 14 months to assess the impacts of Subpart V and plan for compliance. Am. Pet. at 2. The Agency notes that in C.P. Hall's Clean Air Act Permit Program (CAAPP) permit, C.P. Hall has committed to a compliance schedule to complete the installation of the oxidizer.⁴ Rec. at 14, citing Attachment A. In the permit, C.P. Hall has agreed to enter into a binding agreement to alter the affected reactor trains by November 30, 1999; apply for a construction permit for a thermal oxidizer by March 31, 2000; have the thermal oxidizer delivered to the facility by July 31, 2000; complete construction of thermal oxidizer by September 30, 2000; and have the thermal oxidizer fully operational and in complete compliance by December 31, 2000. Rec. at 15, citing Condition 7.1.5 of Attachment A.

PAST EFFORTS TOWARD COMPLIANCE

The Agency notes that C.P. Hall is currently in compliance with the 90% control requirements of 218.501(a), and it is likely that there will be no violation of the control requirements with or without the variance. Rec. at 6. However, the Agency reports that C.P. Hall has not installed the temperature monitoring devices required by Section 218.504(d). Rec. at 6.

C.P. Hall maintains that it is not practicable for the facility to install the temperature monitoring devices which are set forth as a monitoring alternative in Section 218.504(d)(1). Am. Pet. at 3. C. P. Hall argues that each of the 125 different products manufactured at the facility has many different stages. Am. Pet. at 3. C.P. Hall believes it would be required to conduct performance testing on each batch

³ No date of the most recent stack test is provided by either party.

⁴ C.P. Hall's CAAPP permit is attached to the Agency Recommendation and labeled "Attachment A."

and would need to establish an operating temperature range for each batch. Am. Pet. at 3. Also, the temperature monitoring device would need to be operated to recognize hundreds of temperature ranges, which makes this requirement an impossible task. Am. Pet. at 3.

HARDSHIP

C.P. Hall's Assertions

C.P. Hall contends that immediate compliance with 35 Ill. Adm. Code 218.501 and 35 Ill. Adm. Code 218.504 is an arbitrary and unreasonable hardship because it is a great financial burden and would harm the environment. Am. Pet. at 2-3. Specifically, C.P. Hall argues that to continuously comply with the 90% VOM removal efficiency under Section 218.501(a), C.P. Hall would have to purchase new, larger condensers, each costing about \$218,000. Am. Pet. at 4. Other major operating and structural modifications to the cooling water systems would cost \$466,000. Am. Pet. at 4. Additionally, C.P. Hall argues that the monitoring devices addressed in Section 218.504(d)(2) would cost \$482,020, for a total of approximately \$1.166 million to comply with Subpart V, as compared to \$307,000 for installing the thermal oxidizer. Am. Pet. at 3-5.

In addition to the financial hardship, C.P. Hall implies that immediate compliance with Subpart V would not be beneficial to the environment. Specifically, C.P. Hall notes that because it is currently over-controlling the emissions, the emissions expected to be emitted during the 2000 ozone season would be 30 tons. Am. Pet. at 2. C.P. Hall compares the 30 tons to the 36 tons allowed to be emitted by the facility pursuant to the 90% control requirements. Am. Pet. at 2. Lastly, C.P. Hall argues that it only became aware of Subpart V's applicability in September 1998, which was "substantially later than other regulated entities." Am. Pet. at 6.

The Agency's Recommendations

The Agency agrees that denial of a variance would result in an arbitrary or unreasonable hardship to C.P. Hall. Rec. at 12. Specifically, the Agency agrees that fewer VOM reductions in the future would result if C.P. Hall had to incur additional expenses to come into compliance with Subpart V. Rec. at 12. The Agency notes that it is possible that C.P. Hall could develop a method to comply with Subpart V which would not cost over \$1 million. Rec. at 11. However, the Agency agrees that using a thermal oxidizer to comply with Subpart V makes both economic and environmental sense. Rec. at 11. Additionally, the Agency believes that no added environmental benefit would result from requiring C.P. Hall to put forth the additional expense for immediate compliance. In fact, the Agency acknowledges that there would be environmental harm to requiring immediate compliance with Subpart V's monitoring requirements, because C.P. Hall would then not install the thermal oxidizer if it was required to go to great expense to immediately comply with Subpart V. Rec. at 12.

The Agency does disagree that C.P. Hall was at a disadvantage to its competitors in its ability to become aware of and plan for Subpart V. Rec. at 13. Nevertheless, the Agency agrees that encouraging C.P. Hall to install the thermal oxidizer, rather than installing larger condensers, upgrading

the cooling system and installing either temperature or VOM monitoring devices would prevent an arbitrary and unreasonable hardship for C.P. Hall. Rec. at 13.

Board Conclusion

The Board agrees that C.P. Hall would suffer a financial hardship if compelled to immediately comply with Subpart V. Accordingly, the Board finds that to require immediate compliance with Sections 218.501 and 218.504 would impose an arbitrary or unreasonable hardship on C.P. Hall.

ENVIRONMENTAL IMPACT

C.P. Hall's Assertions

C.P. Hall argues that there will be an environmental benefit from its compliance plan. Am. Pet. at 4. Specifically, C.P. Hall alleges that using the thermal oxidizer would allow it to have a 98% reduction of emissions. Am. Pet. at 4. Subpart V only requires 90% emissions reduction. Am. Pet. at 4.

The Agency's Recommendations

The Agency concludes that there will be no negative environmental impact from granting the variance. Rec. at 10. The Agency bases this conclusion on the fact that the available stack test information shows that C.P. Hall is currently in compliance with Subpart V's substantive emission limitations. Rec. at 10. The Agency notes that during the 1997, 1998, and 1999 ozone seasons, there were no exceedances of the National Ambient Air Quality Standards for ozone measured at a monitoring station near C.P. Hall's facility. Rec. at 10.

The Agency further notes that the compliance plan would provide an environmental benefit by reducing emissions at the facility from approximately 30 tons in the 2000 ozone season to less than 1 ton per year. Rec. at 10. With the thermal oxidizer, C.P. Hall's seasonal emissions for 2001 will be approximately .06 tons per year. Rec. at 10. Under Subpart V, C.P. Hall is allowed to emit 36 tons per year. Rec. at 10.

Board Conclusion

The Board concludes that the record demonstrates that the environmental impact of granting the variance, if any, is minimal. Additionally, it is likely the thermal oxidizer will over-control the emissions at the facility.

CONSISTENCY WITH FEDERAL LAW

C.P. Hall's Assertions

C.P. Hall claims this Board has the authority to grant the requested relief consistent with the Clean Air Act (42 U.S.C. Sec. 7401 *et. seq.*) Am. Pet. at 7.

The Agency's Recommendations

The Agency agrees that grant of variance to C.P. Hall is consistent with federal law. The Agency notes, however, that for the United States Environmental Protection Agency (USEPA) to recognize the substance of this variance, the variance must be submitted to USEPA as a state implementation plan (SIP) revision. Rec. at 14. Therefore, the Agency concludes, "in order to meet the requirements of Section 110(a) of the Clean Air Act, a public hearing must be held on the proposed variance before it may be submitted as a SIP revision." Rec. at 14. After receiving the Agency's recommendation, and despite this warning, C.P. Hall waived hearing in this matter on January 6, 2000, stating "In light of the Illinois Environmental Protection Agency's Recommendation is support of C.P. Hall's Amended Petition for Variance . . . C.P. Hall now withdraws its request for hearing in this matter and further waives its request for hearing in this matter." Motion at 1.

Board Conclusion

The Board finds that grant of this variance is consistent with federal law.

RETROACTIVE RELIEF

C.P. Hall requests that this variance begin on December 31, 1999, the date on which Subpart V became effective. Am. Pet. at 5-6. C.P. Hall did not request that the Board retroactively apply the variance. The Agency's recommendation was filed on December 21, 1999, and did not address retroactive application of the variance.

The Board has determined that, in the absence of unusual or extraordinary circumstances, the Board grants a variance as effective on the date of the Board order in which it is issued. LCN Closures, Inc. v. IEPA, (July 24, 1989), PCB 89-27, 101 PCB 283, 286; Borden Chemical Co. v. IEPA, (December 5, 1995), PCB 82-82, 67 PCB 3, 6. As the supreme court discussed in Monsanto, "the Board can provide relief from the hardship of immediate compliance and yet retain control over a polluter's future conduct by granting a temporary variance." Monsanto Co. v. Pollution Control Board, 67 Ill.2d at 288, 367 N.E.2d at 689 (1977).

The parties have not alleged any unusual or extraordinary circumstances to justify retroactive application of the requested variance. The Board finds that this variance will begin on the date of this order, and therefore, it will not apply retroactively.

CONCLUSION

Balancing the alleged hardship against the anticipated environmental impact, the Board finds that to require immediate compliance with Subpart V would impose an arbitrary or unreasonable hardship on C.P. Hall. The Board finds that grant of this variance is consistent with federal law. The Board,

accordingly, grants C.P. Hall variance from 35 Ill. Adm. Code 218.501(a) and 218.504(d)(1), (2) (1998), subject to the conditions set forth below.

The order reflects the Agency's recommendations. This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The C.P. Hall Company is hereby granted a variance from 35 Ill. Adm. Code 218.501(a) and 281.504(d)(1), (2), at its facility located at 5851 West 73rd Street Bedford Park, Cook County, Illinois, subject to the conditions outlined below.

1. The variance begins on February 17, 2000, and terminates when C.P. Hall has installed a new thermal oxidizer as its control device to achieve compliance with 35 Ill. Adm. Code Part 218, Subpart V, according to the compliance plan contained in Condition 7.1.5 of its Clean Air Act Permit Program permit and any construction permits granted for installation of the thermal oxidizer. This variance shall terminate no later than December 31, 2000.
2. When C.P. Hall is required to replace Condenser V-62, such replacement may be done without installation of a temperature monitor or VOM monitor as required by 35 Ill. Adm. Code 218.501(c), so long as C.P. Hall notifies the Agency when such replacement is commenced.

IT IS SO ORDERED.

If petitioner wishes to accept the variance as granted, petitioner shall, within 45 days of the date of this order, or on or before April 2, 2000, certify that it accepts the terms of the variance by executing and forwarding to Deborah Williams, Division of Legal Counsel, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276, a certificate of acceptance and agreement to be bound by all of the terms and conditions of the granted variance. Such acceptance shall be signed by an officer of the C.P. Hall Company, duly authorized to bind the C.P. Hall Company, to all of the terms and conditions of the final Board order in this matter. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which the Board has granted relief. The form of the certificate is as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 00-54, dated February 17, 2000.

(Petitioner)

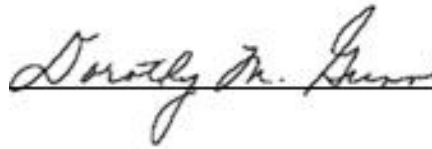
_____ (Authorized Agent)

_____ (Title)

_____ (Date)

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) 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 opinion and order was adopted on the 17th day of February 2000 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board