ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

ALTON PACKAGING CORP.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 83-49
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

MR. DANIEL F. O'CONNELL APPEARED ON BEHALF OF PETITIONER, ALTON PACKAGING CORPORATION;

MR. WILLIAM INGERSOLL APPEARED ON BEHALF OF RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

This matter comes before the Board upon an amended petition for variance filed by Alton Packaging Corporation ("Alton") on February 17, 1987. Alton seeks variance from former Rule 204(f) of Chapter 2 of the Board's Air Pollution Rules and Regulations (now codified as 35 Ill. Adm. Code 214.141) for sulfur dioxide (SO_2) emissions emanating from boilers 6 and 7 at its paperboard mill ("Alton Mill") located in Alton, Illinois. Variance relief is requested for a period of three years or until the Board grants Alton site-specific relief from Section 214.141, whichever occurs sooner.

For the reasons described below, the Board finds that Alton has failed to make the requisite showing necessary for the granting of variance relief. The Board will therefore deny the variance relief requested by Alton.

BACKGROUND

Rule 204 was amended by the Board on February 24, 1983. A new subsection (f) was added at that time which instituted a sulfur dioxide emission limitation of 1.8 pounds per million British thermal units ("mmbtu") of energy produced. Alton filed its initial variance petition in this matter, along with a concurrent petition seeking Board approval of an alternative standard for the Alton Mill pursuant to 35 Ill. Adm. Code 214.201, on April 13, 1983. Because Alton filed its variance petition within 20 days of the effective date of Rule 204(f), it received an automatic stay, pursuant to Section 38(b) of the Environmental Protection Act ("Act"), of the emission limitation pending disposition of its variance petition.

The Illinois Environmental Protection Agency ("Agency") filed Recommendations on August 17, 1933, recommending that Alton's petitions for variance and site-specific relief be denied. The Agency recommended denial due to its belief that Alton's air dispersion modeling failed to show, "under all foreseeable conditions", that Alton's requested level of sulfur dioxide emissions would not cause or contribute to a violation of the National Ambient Air Quality Standard for sulfur dioxide.

After the filing of the Agency's recommendations, Alton worked with the Agency in revising its modeling study. On June 29, 1984, the Board, noting no activity in the case since August 1983, ordered a hearing to be held on Alton's petitions within 60 days. On July 1, Alton filed a motion to extend the hearing date until October 30, because the hearing officer assigned to the case was unavailable for a hearing within the time set by the Board. The Board granted Alton's motion. A hearing was scheduled for October 25, but was rescheduled to December 7 by the hearing officer.

At the December hearing, Alton presented the conclusions of its revised modeling study through the testimony of its consulting expert. At the end of the hearing, Alton stated it intended to file within the next thirty days amended petitions conforming with the testimony at the hearing. The Agency noted that it already had Alton's modeling results and would file an amended recommendation within 30 days after receiving Alton's amended petitions. No amended petitions were ever filed.

In April of 1985, the Agency sent a letter to Alton asking for clarification of a few technical matters. Alton forwarded this letter to its consultant, but apparently no response was made. On July 19, 1985, the Agency moved to dismiss Alton's petitions for failure to prosecute the matter with diligence. On July 23, the hearing officer scheduled a hearing on Alton's petitions for September 18. On August 1, however, the Board dismissed Alton's case. The Board stated in its Order, after noting no further activity in the case since the December hearing, that Alton had had sufficient time to present its case and should not be allowed to extend the automatic stay by filing an amended petition. The hearing officer accordingly cancelled the September 18 scheduled hearing. Alton filed a motion for reconsideration on September 4, 1985, which the Board denied on September 20, 1985. Alton then appealed the Board's decision to the Illinois Appellate Court, Fifth District.

The Fifth District Court found on September 5, 1986, that the Board erred in dismissing Alton's petition without a hearing and in refusing to reconsider its decision. The Court noted that a dismissal for failure to prosecute is justified when the party has been guilty of inexcusable delay in prosecuting the suit. The Court found, however, that the record did not support a

finding of inexcusable delay on the part of Alton. The Court consequently reversed the Board's August 1, 1985, decision dismissing Alton's petitions and remanded the matter back to the Board for further proceedings. A new hearing was conducted on January 15, 1987. An amended petition was filed by Alton on February 17, 1987. Post hearing briefs from both Alton and the Agency have also been received by the Board.

THE ALTON FACILITY

The Alton Mill is one of the larger paperboard mills in the Midwest. It is located within the city limits of Alton, Illinois, in Madison County on the Mississippi River immediately below Alton Lock and Dam No. 26. The Alton Mill employs 60 salaried and 230 union employees.

The Alton Mill site is approximately 107 acres, and includes several buildings comprising a little over 500,000 square feet. The Alton Mill produces approximately 600 tons of paperboard per day and 200,000 tons per year. The paperboard is converted into manufacturing products for use in corrugated shipping containers. R. at 34.[1]

The Alton Mill uses steam both for heating and in the production of paperboard. Alton owns five boilers which it can use to produce steam. Of these, Alton regularly uses only boilers 6 and 7. Id. These two boilers have adequate capacity to provide all the steam needed at the Alton Mill, and at the same time, provide steam to LaClede Steel Company ("LaClede") pursuant to an agreement between the two companies (see pgs. 8-9).

Boilers 8 and 9 are only used when the main boilers (i.e. boilers 6 and 7) are unable to operate at their normal capacity. In such a situation, boilers 8 and 9 are normally operated on natural gas, but can be operated on oil. Boiler 5 has not been fired in years, but can be fired on an emergency basis. R. at 34-35.

[1] References made to the transcript of the January 15, 1987, hearing in this matter will be cited as "R. at _____".

The capacity of the five boilers is as follows:

Boiler #	Heat Input BTU/hrs.	Fuel Used
5	114 mmbtu	Gas
	125 mmbtu	Oil
6	171 mmbtu	Coal
	173 mmbtu	Gas
	178 mmbtu	Oil
7	445 mmbtu	Coal
	444 mmbtu	Gas
	464 mmbtu	Oil
8	182 mmbtu	Gas
	175 mmbtu	Oil
9	182 mmbtu	Gas
	175 mmbtu	Oil

R. at 35.

Boilers 6 and 7 are the subject of Alton's Petition for Variance. Notwithstanding their rated capacity, the boilers are not operated above 138.5 mmbtu per hour for boiler 6 and 365.5 mmbtu per hour for boiler 7, for a combined maximum firing rate of 504 mmbtu per hour. R at 35. Boilers 6 and 7 are pulverized, wet bottom boilers. Coal is ground into a fine powder in five pulverizers and then blown into the boilers. The coal is burned in the boilers, producing heat; the heat, in turn, is used to produce steam for heating and process use. The exhaust from each boiler passes through a mechanical collector known as a "multi-clone" and then through an electro-static precipitator. These particulate control devices have a combined collection efficiency of approximately 99%. The boilers vent through separate stacks which are 54 feet above the Mill roof and 192 feet above grade. R. at 35-36. The Alton Mill is not equipped with any add-on control devices to reduce sulfur dioxide emissions. R. at 36.

RELIEF REQUESTED

Alton requests that the Board grant it variance from Section 214.141 for three years or until the Board grants it site-specific relief from the same section, whichever occurs first. Alton is willing to limit the scope of this relief by complying with a number of conditions. Specifically, these conditions are that:

(1) Alton will operate boilers 6 and 7 using coal with a maximum average SO_2 emission rate of 5 lbs per mmbtu;

(2) Alton will limit its firing rate to 138.5 mmbtu per hour for boiler 6 and 365.5 mmbtu per hour for boiler 7;

(3) Alton will not operate its boilers 5, 8 and 9 on oil unless it limits its operation of boilers 6 and 7 to the use of coal with a maximum average SO_2 emission rate of 1.8 lbs per mmbtu; and

(4) Alton will increase the height of the stacks from boilers 6 and 7 to 234 feet above grade.

The suggested compliance conditions would not inhibit Alton's ability to maintain its operations at present levels, and in fact seem to provide some flexibility for Alton to expand operations. More specifically, Alton proposes (pursuant to condition 1, above) to operate its boilers 6 and 7 solely on coal having a maximum average SO_2 emission rate of 5 lbs per mmbtu. Based on a weighted average, the Alton Mill's SO_2 emission rate for 1985 was 4.43 lbs per mmbtu. R. at 37.

A similar degree of leeway appears to exist in the requested condition pertaining to the firing rates of the two boilers. Under condition 2 (above), Alton proposes to limit the firing rate of boilers 6 and 7 to 138.5 mmbtu per hour and 365.5 mmbtu per hour, respectively. The Agency contends such a level of operation would be approximately 24% greater than the level anticipated for 1987, and the latter assumes an approximate 45% increase in the amount of coal burned over 1986 levels. Agency Post-Hearing Brief, p. 6.

ECONOMIC HARDSHIP

Alton states that in order to comply with the 1.8 lbs/mmbtu limitation, it would have to purchase low-sulfur coal from out-of-state sources. R. at 48-49. At time of hearing, Petitioner indicated its belief that it could purchase such coal for $37.80 per ton, which Alton states is $9.80 to $12.50 more per ton than it pays for the coal it currently uses. R. at 49. Alton calculates that for 1987 coal purchases, this manner of complying with the 1.8 lbs/mbtu standard would cost the company an additional $1.43 million to $1.82 million. Id. Petitioner argues that this cost would be economically unreasonable, and warns that the profitability of its Alton facility would be seriously jeopardized if it were forced to increase its operating costs in this manner. Alton's Post-Hearing Brief, p. 22. According to Petitioner, "(t)he Company's management would be

forced to reconsider the continued economic viability of the (Alton) Mill". Id.

The burden of proof in a variance proceeding is on the petitioner (see Ill. Rev. Stat. 1985, ch. 111½, par. 1037(a)), and the Board concludes that in this instance Petitioner has failed to adequately demonstrate that denial of the requested relief would impose an arbitrary or unreasonable hardship upon Alton.

Alton has failed to make the requisite showing in several respects. First, Alton's projected $1.43 million to $1.82 million increase in annual operating costs (predicted to come about because of a need to purchase low-sulfur coal from out-of-state) is subject to some dispute. These figures were calculated from a per ton price of $37.80. The Agency questions the manner in which that figure was determined, as it is the result of a "spread sheet check on prices in various mines" (R. at 59), but is apparently not the result of a bidding process. Agency Post-Hearing Brief, pgs. 6-7. Competitive bidding might very well reduce the price per ton of this coal, thereby reducing the overall cost of compliance and impacting the question of whether unreasonable economic hardship exists.

Second, Alton has presented no data concerning the cost(s) of utilizing any other compliance option(s). The Board is aware from its past rulemakings that other technologies exist for sulfur dioxide control. These include lime or limestone injection into the furnace with the pulverized coal, fluidized bed furnaces, and wet and dry stack gas scrubbers. Alton presents no information whatsoever regarding any of these possible alternatives. It is not clear whether Alton has investigated any alternative control technologies, or whether utilizing low-sulfur coal would in fact even be the most economical way for Petitioner to comply with the 1.8 lbs/mmbtu limitation. Similarly, Alton has made no mention of whether it has considered alternative energy sources to coal that might be used for the production of steam. In this context it is to be noted that the boilers in question are capable of operating on fuel other than coal.

Finally, Alton has not shown the impact that a $1.43 million to $1.82 million increase in annual operating expenditures would have on Jefferson Smurfit Corporation ("JSC"). Alton is wholly owned by JSC, yet Petitioner has not addressed the question of whether an increase in costs of the magnitude discussed would constitute unreasonable economic hardship to JSC. Alton contends that the viability of a JSC plant (of which the Alton Mill is one) is evaluated by the corporate parent on the basis of that plant's individual profitability, and so for that reason argues that the projected increase in operating costs should be evaluated in light of the Alton Mill's $3.5 million profit in

1986. Alton's Post-Hearing Brief, p. 23; R. at 63. As an illustration of the JSC philosophy, an Alton witness testified that "(o)nly if (the plant) can show a return do(es) (the plant) receive capital funds for improvement". R. at 61.

That JSC evaluates each of its plants as individual profit centers is well and good, but that is not relevant to the issue of whether the Board should look in this instance solely to Alton or JSC to determine the true cost of compliance with Section 214.141. In fact, that the JSC plants compete with each other for capital improvement funds is telling, but for a different reason than that envisioned by Alton. As JSC seemingly views the Alton Mill in identical fashion to the way it views its other plants, and given that $10 million in capital improvement funds is presently committed by JSC to the Alton Mill (R. at 63), it is apparent that Alton does not operate in a manner thoroughly independent from JSC. On the contrary, Alton more readily appears to function as an arm of JSC. This is further exemplified by the fact that at least some percentage of the Alton Mill's output is utilized by JSC for production within the latter's Container Division. Exhibit 1, p. 6. JSC is the entity against which the projected increase in operating costs must also be evaluated, but Alton did not provide the information which would have made such an analysis possible.

ENVIRONMENTAL IMPACT

Alton presented the findings of two modeling studies, both undertaken by contractors hired by Petitioner, in support of its contention that ambient air quality will be protected during the term of the requested variance.

Ronald L. Petersen of Cermak/Peterka and Associates, Inc. testified at hearing regarding the fluid modeling study that company performed for Alton. This study was done to demonstrate that the increase in height Alton proposes for the stacks of its boilers 6 and 7 (from the existing 192 feet to 234 feet) is necessary in order to avoid "excessive concentrations" of SO_2 due to downwash effects. Such a demonstration must be made before a facility may receive credit in its air dispersion modeling for certain stack height increases. R. at 21-22.

Federal regulations define "excessive concentrations" as those occurring where maximum ground level concentrations are 40% higher because of downwash effects caused by nearby structures than the concentration would be with these effects removed, and those maximum ground level concentrations are in excess of National Ambient Air Quality Standard ("NAAQS"). R at 22. The modeling study showed that both conditions are satisfied in this instance. That is, at the operating parameters requested by Alton (SO_2 emission rate of 5 lbs/mmbtu and operating rates of

138.5 and 365.5 mmbtu per hour for boilers 6 and 7, respectively), the maximum hourly ground level concentrations would be 40% higher because of the structures present, and these concentrations would be expected to exceed the NAAQS[2]. R. at 25-27.

John Paul Bradley of Murray and Trettel, Inc. presented testimony on the air dispersion modeling study completed by that company for Alton. The study consists of two components. The first involved an analysis of what operating parameters at the Alton Mill would assure maintenance of the NAAQS for SO_2 after the planned increase in stack height, without reliance on LaClede's reduced SO_2 emissions pursuant to the steam agreement. R. at 75-76. The second component addressed the questions of what combination of operating parameters and other arrangements would ensure that the NAAQS for SO_2 would be maintained prior to the completion of the stack height increase. R. at 76.

The modeling used a grid of 79 receptors, arranged on a roughly rectangular grid. R. at 83. Receptors were located in areas expected to receive the most significant impact, and in areas of expected interaction between Alton and other modeled sources. Id.

All 79 receptors were modeled using 1973 meteorological data. R. at 86. Seven receptors showed second highest concentrations exceeding 85% of the 365 microgram per cubic meter ("ug/m^3") 24-hour standard. Id. These seven receptors were then modeled using 1974-1977 meteorological data. The highest second highest concentration recorded by a receptor was 358.6 ug/m^3. Id.; Alton Group Exhibit[3] 5(h). The modeling therefore demonstrated no modeled violations of 35 Ill. Adm. Code 243.122 (Sulfur Oxides). Based on these results, Mr. Bradley opined that at the operating parameters requested by Alton, emissions from the Alton Mill boilers will not result in any violations of the SO_2 NAAQS. R. at 87.

The second component of the air dispersion modeling consisted of an analysis of how Alton might provide for the maintenance of ambient air quality during the period prior to accomplishment of the stack height increase. The modeling done for this question showed that no violations of the NAAQS for SO_2

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[2] In fact, Dr. Petersen testified that even if the SO_2 emission rate was 1.8 lbs/mmbtu, the fluid modeling study predicted that the NAAQS for SO_2 would be violated.

[3] Hereinafter references to Alton's Exhibits will appear as "Alton Ex. _____".

would occur as a result of Alton's emissions during this interim period, provided that Petitioner operates within the parameters it requests and LaClede complies with the provisions of the agreements reached between Alton and itself. R. at 91-92. A description of these agreements is appropriate this time.

An agreement involving the sale of steam from Alton to LaClede was entered into by those two entities in 1984. Alton Ex. 4(a); R. at 42. Under the terms of the contract, steam is provided via a line constructed from the Alton Mill to LaClede. The steam is sold at an agreed price, and is used by LaClede in its operations. As a consequence of the contract, LaClede has not operated its steam boilers 1 and 2 for the last few years. Id. The contract provides that it can only be terminated after six months written notice (Amended Petition for Variance, p. 10) and will expire in 1989 (R. at 43).

Alton's air dispersion modeling predicted violations of the NAAQS for SO_2 prior to the stack height increase if Alton operates within its requested parameters and LaClede operates its boiler 2 at its maximum permitted level using oil. R. at 88-89. Alton is therefore relying, in making its case, on LaClede to adhere to the terms of the steam sales agreement and consequently not operate its boilers. Alton asserts that LaClede and itself will "almost undoubtedly maintain this agreement throughout the period of the variance prior to Alton raising its stacks (because) ... the economies for both parties will provide a strong incentive to maintain the arrangement". R. at 43.

Alton has also entered into a "notification" agreement with LaClede for the purpose of allowing Alton to avoid violations of the SO_2 NAAQS should LaClede decide to operate its process sources on oil. Under the terms of the agreement, LaClede would provide Alton written notification seven days prior to operating in this manner. LaClede's process sources are presently operated on natural gas, but are permitted to operate on oil.

Alton has stated that it would accept the following operating restrictions as conditions to the granting of the requested variance, in order to prevent NAAQS violations of SO_2 should any of the following scenarios arise. These conditions would apply to the period prior to the completion of the stack height increase. Alton's modeling predicts that in the following situations, Petitioner could operate at the stated levels and not cause SO_2 violations:

Scenario	Allowable SO_2 Emissions (lbs/hr)	Coal SO_2 Emission Rate (lbs/mmbtu)	Firing Rate (mmbtu/hr)	
Status Quo (steam contract is observed and LaClede operated its process sources on natural gas)	2,520	5 or 1.8 if Boilers 5, 8 and 9 are operated using oil	Boiler 6: Boiler 7: Total:	138.5 365.5 504.0
LaClede operates Boilers 1 and 2 on oil and process sources on natural gas	2,493	5	Boiler 6: Boiler 7: Total:	137.0 361.6 499
Steam Contract continues, but LaClede operates its process sources on oil	1,048	5	Boiler 6: Boiler 7: Total:	112.6 297.0 409.6
LaClede operates Boilers 1 or 2 and process sources on oil	1,925	5	Boiler 6: Boiler 7: Total:	105.8 279.2 385.0

COMPLIANCE PLAN

It is axiomatic that a variance does not grant permanent relief from compliance with a regulatory requirement. One necessary aspect of a variance petition is that it describe how and when a facility will come into compliance. This concept is articulated at 35 Ill. Adm. Code 104.121(f):

> A detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for implementation of all phases of the control program from initiation of design to program completion and the estimated costs involved for each phase and the total cost to achieve compliance.

Alton has not presented a compliance plan in the proper sense of that term. Alton has offered no plan under which the boilers at the Alton Mill would ever be brought into compliance with the Act and regulations. Rather, Alton requests a three-

year variance so that it may pursue permanent relief from the 1.8 lbs/mmbtu standard of Section 214.141 by attempting to secure, pursuant to 35 Ill. Adm. Code 214.201, an alternative standard for the Alton Mill. Moreover, Alton's Amended Petition for Variance does not include a commitment from Petitioner that it will bring the Alton Mill into compliance by a date certain should the Board deny Alton the relief it requests under Section 214.201.

The absence of a compliance plan in this matter is one of the factors upon which the Agency bases its recommendation that variance relief be denied Petitioner. The Agency opines that "(p)ursuit of a site-specific limitation is not a compliance plan to support a variance petition". Agency Post-Hearing Brief, p. 11. Conversely, Alton contends that Citizens Utilities Co. v. Pollution Control Board, 152 Ill. App. 3d 122 (3rd Dist. 1987), is controlling and cites it for the proposition that it is reversible error for the Board to refuse to grant a variance, pending resolution of an ongoing related rulemaking proceeding, if granting the variance would prevent the expenditure of what might become needless compliance costs.

The Board finds that Citizens Utilities is readily distinguishable from the matter at hand. Citizens Utilities concerned an ongoing rulemaking in which the Agency was proposing amendments to rules which, if promulgated, would arguably have negated the need for that petitioner or for any other similarly located entities to undertake any compliance effort. In the instant matter, the "ongoing rulemaking", PCB 83-55, is a creation of Petitioner itself, and consists entirely of a proposal which would remove Petitioner alone from the need to comply with existing regulations. The Board does not believe that such actions on the part of a petitioner can or should be allowed to serve the end of avoiding compliance or deflecting enforcement.

Moreover, the Board believes that it has never been the intent of the General Assembly to require the granting of variance whenever a regulatory standard is under review. In support thereof, the Board looks to the action of the General Assembly in its most recent general session. There the Illinois House passed by a vote of 114-1 and the Illinois Senate passed by a vote of 37-7 the following amendment to Section 35(a) of the Act:

> (a) The Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. However, the Board is not required to find that an arbitrary or unreasonable

> hardship exists exclusively because the regulatory standard is under review and the costs of compliance are substantial and certain...

The omnibus bill containing this amendment also contained certain provisions totally unrelated to the amendment. Controversial provisions regarding landfill fee caps were added to the bill in a conference committee report by a vote of 81-31 in the House and 35-20 in the Senate. The Governor then amendatorily vetoed the bill regarding the fee cap and other provisions having to do with the Solid Waste Management Act, all of which was unrelated to the amendment of concern in the instant case. Although the total bill failed to gain passage during the following veto session of the General Assembly, the Board believes that the strong vote of both Houses of the original bill containing the amendment and the absence of the Governor's veto of the particular provision in question stands as a public record of legislative intent to not require granting of variances whenever there is review of an underlying regulation.

The Illinois Supreme Court recently addressed a similar interpretation of legislative action in Central Illinois Public Service Company v. Illinois Pollution Control Board, 116 Ill.2d 397, 507 N.E. 2d 819 (1987), in which it noted:

> Subsequent enactments may be used to help determine the legislature's original intent (In re Marriage of Semmler (1985), 107 Ill. 2d 130, 137), particularly where the amendment is enacted shortly after the interpretation of the statute it amends comes into dispute (People v. Rink (1983), 97 Ill. 2d 533,540-541). This amendment is additional evidence that the legislature did not intend to do away with site-specific rulemaking pursuant to section 27 when it originally enacted section 28.1.

The Board therefore finds that it is not now, nor has it been, the legislative intent of the variance process in Illinois to require granting of variances for the reasons here advocated by Alton. Moreover, the Board affirms that pursuit of a site-specific limitation does not of itself constitute a compliance plan sufficient to meet the requirements for granting of a variance. See Modine Manufacturing v. IEPA, PCB 79-112, August 18, 1982; Modine Manufacturing v. IEPA, PCB 85-59, May 16, 1985; City of Mendota v. IEPA, PCB 85-182, July 11, 1986; Borden Chemical v. IEPA, PCB 82-82, December 5, 1985; Schrock/A Tappan Division v. IEPA, PCB 86-205, March 5, 1987.

CONCLUSION

The Board finds that Alton has not persuasively shown that it would suffer arbitrary or unreasonable hardship if denied variance relief in this matter. Petitioner has not proven that it or its parent company, JSC, would be faced with economic hardship if required to comply with Section 214.141 (see pgs. 5-7). In addition, Alton has failed to meet another necessary prerequisite to the granting of variance relief. That prerequisite is a commitment to the imposition of a compliance plan which ensures that compliance will be achieved by a date certain. For either reason the Board must deny the relief requested.

The Board does note that Alton has presented a great deal of modeling data, which Petitioner has provided for its own purpose of showing that the requested variance relief will not cause a violation of the SO_2 NAAQS. Alton has also presented testimony regarding the "steam sales" and "notification" agreements it has entered into with LaClede. These agreements, from Alton's perspective, also serve the purpose of showing that the requested relief would not cause a violation of the NAAQS for SO_2. Notwithstanding the volume of information presented on these points, the fact is that this evidence only meets the threshhold condition here, since under federal law the Board cannot grant a variance where a NAAQS violation would result. Even the mounds of modeling data presented by Petitioner cannot overcome the basic inadequacy of its case. That is, it has failed to show that it would suffer arbitrary or unreasonable hardship if required to comply with Section 214.141.

However, Alton's modeling data is quite relevant to the showing it must make in the ongoing proceeding in which it seeks an alternative standard for the Alton Mill pursuant to Section 214.201 (PCB 83-55). The Board's determination in this matter is in no way premised on a belief that Alton's modeling data is inaccurate or invalid. Moreover, the Board's decision today does not indicate any predisposition in the pending PCB 83-55 proceeding.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The February 17, 1987, amended petition filed by Alton Packaging Corporation for variance from 35 Ill. Adm. Code 214.141 is hereby denied.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111½ par. 1041, provides for appeal of final

Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25th day of February, 1988, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board