

ILLINOIS POLLUTION CONTROL BOARD  
August 4, 1988

SIMKINS INDUSTRIES, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 87-181  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by B. Forcade):

On July 21, 1988, Simkins filed a Motion for Modification and Request for Supplemental Hearing. That motion seeks to modify a June 16, 1988, Order of the Board which granted Simkins relief, until May 31, 1989, from certain regulations governing the emission of ozone precursors. Simkins seeks modification by extending the relief from May 31, 1989, until May 31, 1993. Simkins for the first time proposes compliance by means of a recently filed site-specific rule change. On July 29, 1988, the Illinois Environmental Protection Agency ("Agency") filed a response in opposition to the motion to modify. Simkins filed a reply on August 3, 1988.

The Board will deny the motion for modification, but will docket the request with a new docket number and allow Simkins to pursue its request in the new proceeding. In this manner, Simkins may retain the protection of the previously granted variance should Simkins choose to sign the certificate of acceptance. The Board will incorporate the present record into the new docket.

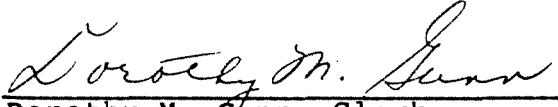
Simkins originally requested a one-year variance from the regulations that apply to its Cicero facility; the Board granted a one-year variance. Now, however, Simkins requests that the Board extend the term of the variance from one year to five years. This the Board cannot do within the instant docket. Prior to Simkins' present request, no evidence has been presented within the instant docket which would allow the Board to evaluate the merits of Simkins' request. Moreover, if a petitioner wishes to seek variance based on new information, it must do so in a new petition so as to allow the Agency and other participants the ability to carefully assess the new information through the procedures provided for in the standard comment, recommendation, and hearing process (Village of Lemont v. IEPA, PCB 85-54, 72 PCB 81; Citizens Utilities Company of Illinois v. IEPA, PCB 86-185, 76 PCB 353; General Tire, Inc. v. IEPA, PCB 86-224, March 10, 1988, Slip op. at 1).

Simkins original grant of variance provided that the variance would be null and void if Simkins did not sign the certificate of acceptance within 45 days. That Order is modified to the extent that Simkins is granted 45 days from the date of the present Order to sign the certificate of acceptance. If Simkins declines to do so, that variance is null and void.

In summary, the Board denies the motion to modify the June 16, 1988, variance. The Board does extend the time for signing the certificate of acceptance until 45 days from today's date. The Board hereby redockets Simkins motion for modification as a new proceeding (PBC 88-121) and directs that all future filings be made in that docket.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4~~th~~ day of August, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board