

ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

A.E. STALEY MANUFACTURING)
COMPANY,)
)
Petitioner,)
)
v.) PCB 88-205
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

CLIFTON A. LAKE, MCBRIDE, BAKER AND COLES, APPEARED ON BEHALF OF PETITIONER.

JAMES O'DONNELL, IEPA, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon a petition for a variance filed on December 30, 1988 by A.E. Staley Manufacturing Company (Staley). Staley seeks a variance from 35 Ill. Adm. Code 212.202 for the period of January 1, 1989 through July 1, 1989 so that it may achieve compliance with the particulate emission standard for coal-fired boilers located outside the Chicago area as set forth in the regulation.

On April 18, 1989, the Illinois Environmental Protection Agency (Agency) filed a Recommendation that the variance be granted for the requested period subject to the imposition of certain conditions. (Agency Rec. at 5). A hearing was held on April 20, 1989. No members of the public attended the hearing. The hearing consisted of the Agency's proposed amendments to its Recommendation which were accepted by Staley. (Tr. at 4-6). On April 26, 1989, the Agency filed its written amended Recommendation. The Agency does not dispute any of the facts set forth in Staley's petition. (Agency's Am. Rec. at 5).

For the following reasons, the Board finds that Staley would incur an arbitrary or unreasonable hardship if the variance was denied. Accordingly, the variance is granted subject to the imposition of conditions as recommended by the Agency.

BACKGROUND

Staley operates a large grain processing facility in Decatur, Illinois. (Petition at 1). The facility utilizes corn to produce sweeteners, animal feeds, starch and other industrial food products. (Id.). Staley operates six coal-fired boilers, designated #19, #20, #21, #22, #23 and #24, to produce process

steam. (Id.). Boilers #22 and #23 are in compliance with the particulate rule. (Id.) Staley purchases coal from the Black Beauty Coal Company blending low sulfur coal with higher sulfur coal. (Agency's Rec. at 2).

PAST EFFORTS

Staley and the Agency engaged in negotiations during 1985 regarding the existing boiler facility. (Pet. at 1.) The negotiations were necessitated by emission testing on one of the six coal-fired boilers which indicated that four of the boilers would be out of compliance with the then proposed emission regulation. (Pet. at 1.) This amended regulation became effective July 9, 1986. (Pet. at 2; see also, R82-1(a).) Staley and the Agency reached an agreement in 1985 whereby Staley agreed to install a new boiler system in exchange for the Agency's issuance of an operating permit for the existing boilers. (Petition at 2; Agency's Am. Rec. at 3). The new boiler system involves construction of two fluidized-bed boilers and the installation of a co-generation unit to produce electricity. (Petition at 2). Construction of this system, with a projected cost of \$70.5 million, began in November of 1985. (Petition at 2). Anticipating that the new system would be operational by January 1, 1989, the permit for the existing boilers expired on December 31, 1988. (Petition at 2). Because four of the boilers do not comply with the particulate emission standard (35 Ill. Adm. Code 212.202), the Agency cannot renew the permit unless a variance is granted.

In 1988, Staley encountered technical difficulties with completing the installation of the new "state-of-the-art" system. (Petition at 3). Although Staley attempted to incorporate time for resolving start-up problems into its schedule, the installation of this highly technical, computer-operated system posed unanticipated problems. (Id.). At the time Staley filed its petition for variance, it had assigned six full-time employees to the project and was expending approximately \$34,000 per week to resolve the start-up problems. (Id.).

COMPLIANCE PLAN

Staley projects that the new boiler system, which will entirely replace the old boilers, will be fully operational no later than July 1, 1989. (Petition at 4).

HARDSHIP AND ENVIRONMENTAL IMPACT

Only two of Staley's existing coal-fired boilers are in compliance with the particulate emission standard. (Petition at 1). Therefore, in order to maintain compliance with the regulation, Staley would have to cease operating 4 of its boilers. The requested variance would allow time for the installation of the new boiler system sufficient to meet the particulate emission standard.

The Agency believes that the variance will not result in an adverse environmental impact. (Agency's Am. Rec. at 3). Although the Decatur area in which Staley is located is a nonattainment area for the National Ambient Air Quality Standard for total suspended particulate matter (TSP), the parties note that the area will likely be designated as an attainment area for the new particulate matter (PM-10) standards. (Petition at 4; Agency's Am. Rec. at 3). Consequently, Staley believes that the grant of the variance will not adversely affect attainment and maintenance of the ambient air quality standards. (Petition at 4). The Agency notes that the short-term trend for 1980-87 indicates that the air quality (TSP) is improving. (Agency's Am. Rec. at 3). Furthermore, during the term of the proposed variance, Staley will operate the new boiler system and existing boilers #22 and #23 to the maximum extent possible to minimize particulate emissions and reduce the load on the four noncomplying boilers. (Petition at 4).

COMPLIANCE WITH FEDERAL LAW

The Agency notes that, if the recommended variance is granted subsequent to the adoption of 35 Ill. Adm. Code 212.202, a SIP revision will be necessary. (Agency's Am. Rec. at 4).

CONCLUSION

In view of the hardship demonstrated, as well as the minimal projected environmental effects expected during the term of this proposed variance, the Board finds that immediate compliance with 35 Ill. Adm. Code 212.202 would impose an arbitrary or unreasonable hardship upon Staley. Accordingly, the variance will be granted subject to the conditions outlined in the order below.

Staley has requested that the relief granted be retroactive to January 1, 1989. (Pet. at 4.) Retroactive variances are granted only upon a showing of exceptional circumstances. (Quaker Oats Co. v. IEPA, 59 PCB 25, PCB 83-107 (July 19, 1984).) Staley has not specifically addressed why it should be granted a retroactive variance. The record establishes that it was not until October of 1988 that Staley encountered problems with the installation of the new boiler system and became aware that it might not meet its anticipated operational date of December 31, 1988. Yet, Staley waited until the day before its permit expired to file its petition for variance. (Pet. at 1.) To grant retroactive relief as requested would encourage others to file in an untimely manner. (DMI, Inc. v. IEPA, PCB 88-132 (February 23, 1989).) Section 38(a) of the Illinois Environmental Protection Act requires that the Board act upon a variance petition within 120 days. (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1038(a).) Staley filed a 75-day waiver of the decision date. Accordingly, Staley will be afforded retroactive relief to April 29, 1989, which is 120 days from the date the instant petition for variance was filed.

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

ORDER

Staley Manufacturing Company is hereby granted a variance from 35 Ill. Adm. Code 212.202 subject to the following conditions:

1. The variance period begins April 29, 1989 and expires on July 1, 1989;
2. Staley is required to utilize the best quality coal available on the spot market, based on both ash and sulfur content which would be comparable to the Black Beauty Coal Company coal;
3. Oil/gas-fired boilers #25 and #26 shall be utilized to reduce the load requirements on the coal-fired boilers #19, #20, #21 and #24;
4. Unit #1 and coal-fired boilers #22 and #23 shall be utilized before coal-fired boilers #21 and #24;
5. Stack opacity shall be limited to 30% except during start-up, shutdown, or malfunctions. Malfunctions with excess emissions shall be reported to the Agency. That these report be addressed to:

Mr. John Justice, Regional Manager
Division of Air Pollution Control
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, Illinois 62234

6. Staley shall continue to maintain and operate a continuous emission monitoring (CEM) system on the subject coal-fired boilers;
7. Staley shall submit monthly reports listing all recorded 6 minute averages when their CEM's opacity readings for the boilers subject to the variance exceed 30% to the above address; and
8. Staley shall routinely collect coal samples and complete lab analysis on a monthly basis to determine sulfur dioxide compliance.

9. Within 45 days after the date of this Opinion and Order, A.E. Staley Manufacturing Company shall execute and send to:

Illinois Environmental Protection Agency
Attention: Thomas Davis
Enforcement Programs
2200 Churchill Road
Springfield, IL 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if A.E. Staley Manufacturing Company fails to execute and forward the certificate within the 45-day period. The 45-day period shall be in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We) _____, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 88-205, dated July 13, 1989, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

Authorized Agent

Title

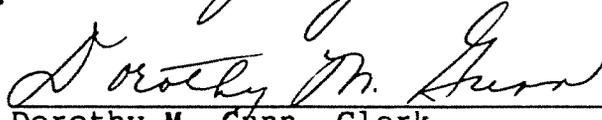
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111-1/2, 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.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of July, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board