

ILLINOIS POLLUTION CONTROL BOARD
January 13, 1983

WILL COUNTY PRODUCE COMPANY and)
S & T COMPANY,)
)
Petitioners,)
)
v.) PCB 82-129
)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on the October 25, 1982 petition for variance of the Will County Produce Company (Company). The Company seeks variance from the noise emission limitations of Rule 204 "Sound Emitted to Class B Land" of Chapter 8: Noise Pollution. On November 15, 1982 the Company moved to amend its petition to add as a petitioner S & T Company, owner of the real estate on which its facility is located, which motion is granted. On January 5, 1983 the Illinois Environmental Protection Agency (Agency) filed its Recommendation in support of variance with conditions. Hearing was waived and none has been held.

The Company operates a wholesale institutional food distributorship located at 250 Republic Avenue, Joliet. The facility is located in an exclusively commercial area, and operates year-round approximately 10 hours per day, 5 days per week.

The primary source of sound emission is four refrigeration units located on the north side of the facility. Operation of these units was the subject of an enforcement action before the Board, IEPA v. Will County Produce Co., PCB 77-133 (Sept. 15, 1977). This was brought by the Agency in response to complaints from an officer of the Three Sisters Beauty Salon, which is located in a building directly north of the facility. The Board accepted a stipulated settlement requiring the Company to install a lined, sound absorptive barrier on the outside of its building, and if noise violations persisted, to line the inside wall of the barrier facing the refrigeration units. In the event violations continued, the Company was directed to apply for a Board variance.

In April, 1980 the Attorney General filed suit in the Will County Circuit Court seeking enforcement of the Order. Compliance was reached in October, 1981, and final judgment entered pursuant to stipulation on December 21, 1981. People v. Will County Produce Co., No. 80CH87.

The Company has expended in excess of \$10,000 to build the required lined barrier and to line the building wall facing the barrier. According to the Agency, these actions resulted in the amount of noise emitted to the beauty salon property ranging from 0 dB at 31.5 Hz to 16 dB at 8000 Hz. However, in order to achieve compliance with Rule 204, additional reductions ranging from $\frac{1}{2}$ dB at 8000 Hz to 5 dB at 2000 Hz are needed.

In response to Agency inquiry concerning this variance petition, one of the owners of the beauty salon indicated that she opposes grant of variance. While admitting that there has been a substantial reduction in noise, she stated that the refrigeration unit noise interferes with the owners' ability to work (do hair, facials, etc.) outside on the patio of their beauty parlor. However, she also remarked that she doesn't want to force the Company to spend "a lot of money" to reduce the noise.

The Agency suggests that compliance could be achieved in one of two ways. The first would involve relocation of the refrigeration units to the south side of the building, it having been determined that the building roof cannot support their weight. This would involve installation of new refrigerant lines (and possibly flow pumps) at a cost in excess of \$250,000; it could also result in installation of larger refrigeration units to handle back pressure.

The other method would involve replacement of the existing plywood noise barrier with a more sound absorptive model. Installation of a heavier concrete block barrier or a commercial sound panel type barrier would cost between \$85,000 and \$135,000.

The Company asserts that denial of variance would impose an arbitrary or unreasonable hardship, given its past efforts and expenditures. It states that the background noise level of the exclusively commercial surrounding area is already close to the applicable noise limits. It reminds the Board that in PCB 77-133, a survey answered by 19 of 52 nearby commercial establishments indicated no objection to the Company's noise.

The Agency recommends grant of variance with conditions. It notes that of the 3 responses received from the 11 businesses contacted concerning this variance, 2 responded that they had no objection. In relation to the objection of the beauty salon, the Agency analyzed the effect of the noise on the salon's outdoor activities, based on a USEPA document titled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare With An Adequate Margin of Safety".

The Agency's conclusions (based on calculations which will not be set forth here) was that prior to erection of the barrier, the noise could have caused some hearing loss, and would have allowed "normal voice satisfactory conversation" only at a distance of $\frac{1}{2}$ meter (1.6 feet). Presently, there is no danger of hearing loss. "Normal voice satisfactory conversation" is possible at a distance of $1\frac{1}{2}$ meters (4.9 feet), and "relaxed conversation" is possible at a distance of $\frac{1}{2}$ meter (1.6 feet).

Variance conditions suggested by the Agency are that the variance be limited to the noise from the existing refrigeration units, that the Company be precluded from installing any other noise producing equipment along the north side of the building, and that it maintain the barrier and yearly report on its condition and effectiveness.

The Board finds that, given the minimal nature of the noise interference and the high costs of achieving compliance as here presented, that denial of variance would impose an arbitrary and unreasonable hardship. The Board notes that neither party has suggested a maximum term for the variance. As no plan for ultimately achieving compliance has been included in this petition, it would seem that the relief the Company may ultimately need can be obtained only through a site-specific rule. A long term variance therefore has not been justified, particularly as the Board also notes that neither party has addressed the question of whether any improvements can be made to the existing barrier.

The Board will grant an 18 month variance, subject to the conditions. During that time, the Company shall investigate the economic and technical feasibility of achieving compliance by improving the existing barrier, and shall report its findings to the Agency. On or before September 1, 1983, the Company shall then file a plan showing how it will come into compliance. This Order does not, however, preclude timely filing of a petition for site specific rule change, or a petition for variance from this Order in the event such petition is filed.

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

ORDER

- 1) Petitioners, the Will County Produce Company (Company) and S & T Company, are hereby granted variance from Rule 204 of Chapter 8: Noise Pollution as it relates to sound from four refrigeration units presently located on the north wall of the Company's facility at 250 Republic Avenue, Joliet, subject to the following conditions:
 - a) This variance shall terminate no later than July 1, 1984.
 - b) This variance shall terminate at such earlier time as either any of the existing units are replaced or additional noise-producing equipment is placed on the north wall.
 - c) The Company shall expeditiously investigate and report to the Agency concerning the economic and technical feasibility of achieving compliance through improving its existing noise barrier.

- d) On or before September 1, 1983 the Company shall present to the Agency a program (with increments of progress) for achieving compliance with the noise regulations on or before the end of the variance period, and shall adhere to that schedule.
 - e) The Company shall maintain its existing noise barrier in best manner practicable and shall report to the Agency concerning its condition and effectiveness on or before September 1, 1983.
- 2) Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 82-129, dated _____, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent


Title

Date

IT IS SO ORDERED.

Chairman Jacob D. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of January, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board