

ILLINOIS POLLUTION CONTROL BOARD
August 6, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-9
)
TRILLA STEEL DRUM CORPORATION,)
)
Respondent.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-56
)
TRILLA STEEL DRUM CORPORATION,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a July 16, 1987, Motion for Modification of the Board's June 25, 1987 Order, filed by Trilla Steel Drum Corporation (Trilla). Trilla requests that the Board reconsider and modify its Opinion and Order of June 25, 1987, with respect to (1) the cease and desist order, and (2) the imposition of the \$10,000 penalty. On July 31, 1987 the Illinois Environmental Protection Agency (Agency) filed its objections to Trilla's motion. For reasons to be discussed below, Trilla's motion is granted in part and denied in part.

First, Trilla requested that the Board reconsider its cease and desist order because it is hoped that an operating permit will be granted. It would like to continue operating and thereby preserve its financial viability and the jobs of its fifty (50) employees. Trilla stated that in March of 1986 and on May 19, 1987, Trilla submitted applications for the renewal of operating permits to the Agency. Trilla stated that it understood when it filed the March, 1986, application that the Agency could not grant the permit until the Board granted a variance. Trilla noted that on February 5, 1987, in PCB 86-9, it received a variance. Therefore, Trilla is hopeful that, based on that variance, the Agency will issue the operating permit based on the May 19, 1987 application.

The Agency responded that Trilla has no variance authorizing the Agency to grant the permit. Relying on American Steel Container Co. v. Illinois Environmental Protection Agency, PCB 86-22, 86-23, 87-90 and 87-91 (June 25, 1987), the Agency argues that because Trilla failed to file a timely Certificate of Acceptance, as required by Board Orders of February 5 and April 1, 1987, the variance does not exist. Therefore, the Agency argues, it cannot grant any permit until after Trilla applies for, and obtains, a new variance.

The Board believes that the Agency's reliance on American Steel is misplaced. That case is distinguishable in that American Steel never submitted the Certificate of Acceptance to the Board. Here, although filed late, Trilla did submit a signed Certificate of Acceptance agreeing to be bound by the terms of the Board's February 5, 1987 Order. The Board will accept the late filing. Thus, the variance is in effect.

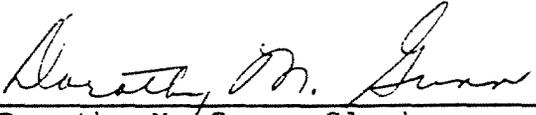
The Board will stay the cease and desist order for sixty (60) days to allow sufficient time for the Agency to take final action on Trilla's May 19, 1987 application. If the permit is granted, then Trilla will not be required to cease operations. If, however, the permit is not granted, then the cease and desist order will apply. Trilla has been operating without a permit in violation of the Illinois Environmental Protection Act (Act) and Board rules since January 1, 1985, and that must cease.

Second, Trilla requests that the Board reconsider the \$10,000 penalty imposed for violating the Act and Board Rules. Trilla argues that it does not need a \$10,000 "incentive" to apply for operating permits. The Agency responded that because of Trilla's history of knowing and repeated failure to take timely action to secure the required variances and permits, the Board's conclusion that a \$10,000 penalty would be added incentive is appropriate. Further, the Agency noted Wasteland, Inc. v. Illinois Pollution Control Board, 118 Ill. App. 3d 1041, 1055, 456 N.E.2d 964 (1983), which recognized that a penalty serves the legislative purpose of aiding enforcement of the Act by providing a deterrent effect on would be violators.

The Board believes that the June 25, 1987, Opinion and Order adequately addresses the basis for the imposition of the \$10,000 penalty and will not repeat that justification here. The Board believes that the penalty does give Trilla needed incentive to come into compliance, and also furthers the State's interest in guarding public health and safety by encouraging general observance of permit laws. As the Board believes the penalty is necessary and appropriate, Trilla's motion as to the \$10,000 penalty is denied.

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 6th day of August, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board