

ILLINOIS POLLUTION CONTROL AGENCY  
August 18, 1982

MODINE MANUFACTURING COMPANY, )  
)  
Petitioner, )  
)  
v. ) PCB 79-112  
)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by I. G. Goodman):

On July 12, 1982 the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss this variance petition -- its third such Motion within a year. On July 20, 1982 Modine Manufacturing Company (Modine) filed a Response and Motion for Additional Time. The Agency filed a Response to Modine's Motion for Additional Time on July 30, 1982, to which Modine filed a Reply on August 3, 1982. No pre-hearing conferences or public hearings are scheduled at this time.

This proceeding was initiated with the variance petition filed by Modine on May 21, 1979. The Agency's recommendation to deny was filed on June 25, 1979. Two hearings were scheduled in 1979, but both were continued. Aside from waivers of the ninety-day decision period and limited discovery, there is no record of this matter progressing during 1980. Two hearings were scheduled in the first half of 1981, but both were again continued.

On August 13, 1981 the Agency moved to dismiss this matter. On August 20, 1981 the motion was denied on the representation that Modine was preparing an amended variance petition. Modine was allowed until September 28, 1981 to file, or be subject to dismissal. A first Amended Petition for Variance was filed on September 24, 1981. Modine alleged therein that it knew of no available treatment process to relieve its need for variance, that Rule 410(c)(iii) of Chapter 3: Water Pollution provided it an exemption, that variance was sought only until such time as its site-specific rule change, R79-8, was finalized, which it anticipated would provide permanent relief, and that denial of the variance requested may result in Modine closing its facility. Again, the Agency recommended denial in its Recommendation filed November 2, 1981.

No further progress is indicated in the Board's record in this matter, until the Agency again moved to dismiss on April 9, 1982. On April 21, 1982 Modine responded that it intended to file a Second Amended Variance Petition circumstances having changed since the First Amended version was filed on September 24, 1981. Modine alleged that it had proceeded to retain a consultant to study the problem and propose a compliance plan; that it no longer intended to close its plant due to financial difficulties; and that it would withdraw R78-9. In addition, Modine stated that additional discharge problems had since been identified which necessitate additional variance relief. This Second Amended version was filed on April 27, 1982.

Recognizing that this was the second time Modine had responded to Agency motions to dismiss with an amended petition, the Board ordered hearing in this matter take place no later than forty-five days after the Agency filed its Recommendation on the Second Amended version. The Agency filed a Recommendation to deny on May 28, 1982. A pre-hearing conference was scheduled for June 11, 1982 but was cancelled. Pursuant to the Board Order, hearing should have taken place no later than July 12, 1982. None having been scheduled, the Agency again moved to dismiss on July 12, 1982. The pleadings subsequent to that motion are listed above.

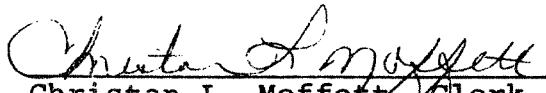
The Second Amended Petition alleges that Modine was developing a compliance plan with its consultant, Dr. Patterson, which will not reach fruition until approximately September, 1983 or later. According to Modine's July 20, 1982 Response to the Motion to Dismiss, it is "following a compliance program involving a review by Dr. Patterson to develop a compliance program." Petitioner Modine apparently misunderstands the purpose and proceedings for Variance pursuant to Title IX of the Environmental Protection Act. Compliance plans are to be developed prior to and included in the variance petitioned, not during its pendency. This is not to say that if no solution to the problem is apparent, the variance requested cannot include a time schedule and compliance plan designed to study and resolve the problem. Furthermore, the ninety-day decision period provided in Title IX is intended to provide an expeditious evaluation of whether petitioner's activity harms the environment, as well as provide petitioner timely relief.

The Board finds that the variance proceeding, as set out in the Act and Board Procedural Rules, has been misused in this case, and that Modine has acted contrary to the April 29, 1982 Board Order. Modine's Motion for Additional Time, filed eight days after the last possible date for hearing, is denied and this matter is dismissed without prejudice. Petitioner is granted leave to refile a variance petition which complies with Section 104.121 of Chapter I, Part 104, Variances (Former Rule 401) and contains current information and an appropriate compliance plan.

IT IS SO ORDERED.

Board Member J. Anderson concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18<sup>th</sup> day of August, 1982 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board