

ILLINOIS POLLUTION CONTROL BOARD

November 22, 1974

ILLINOIS CENTRAL GULF RAILROAD,)
Petitioner,)
)
v.) PCB 73-547
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

Mr. Joseph W. Phebus, attorney for Petitioner.
Mr. Michael Ginsberg, attorney for Respondent.

Order of the Board (by Dr. Odell)

On December 21, 1973, Illinois Central Gulf Railroad (Illinois Central) filed with the Pollution Control Board (Board) a Petition For Variance from Rules 202(b), 203(b), and 205(f) of the Illinois Air Pollution Regulations (Chapter Two). Illinois Central sought a one-year variance from Rule 205(f) and a variance until June 30, 1976, from Rules 202(b) and 203(b) of Chapter Two. Petitioner operates an open air spray painting operation in Centralia, Illinois. The Illinois Central paints approximately 3000 railroad cars yearly at the facility. Some cars are painted inside and out, some are stencilled for identification. In its Petition, Illinois Central stated that a new painting facility was in the preliminary design stage; it was not scheduled to be completed until June 30, 1976.

On January 25, 1974, a Centralia resident filed with the Board an objection to the grant of a variance claiming that the spray painting operation was turning the town orange and that "we no longer wash our windows, we scrape them." The Environmental Protection Agency (Agency) recommended on February 13, 1974, that a six-month variance be granted from Rule 205(f) of Chapter Two and that a one-year variance be granted from Rules 202(b) and 203(a). On March 8, the Illinois Central indefinitely waived the 90-day requirement of final Board action under Section 38 of the Environmental Protection Act (Act).

The Petitioner filed an Amended Petition For Variance on June 26, 1974, requesting a variance from Rule 202(b) and 203(b) of Chapter Two to extend from January 1, 1974, through December 31, 1975. Petitioner estimated that it would have its new indoor facilities completed by the end of 1975. Construction was scheduled to begin on October 1, 1974, with completion fifteen

months later. A construction permit had been granted by the Agency on May 25, 1974. At the present time, to minimize the overspray problem, Illinois Central was building temporary shielding walls around its outdoor operation. These walls were expected to be completed by July 1, 1974. On an average day 12.4 railroad cars are painted at the facility; the average car receives 21.9 gallons of paint weighing 203.67 pounds. Therefore, the average hourly process weight was calculated at 315.68 lbs/hour.

The Agency filed its Amended Recommendation on August 21, 1974. The Agency felt that under Rule 203(c), Petitioner had to comply with Rule 203(a) not 203(b). Since the Petitioner under Rule 203(c) was in violation of Rule 203(b) on the effective date of the Chapter Two Regulations, Illinois Central was required to meet the Rule 203(a) standard by December 31, 1973. Based on Illinois Central's process weight of 315.68 lbs/hour, the allowable emission rate of particulates under Rule 203(a) is .95 lbs/hour. The Agency stated that Petitioner's proposed spray paint facility with its four spray booths would limit particulate emissions to .79 lbs/hour. The Agency noted that citizens contacted did complain about spray paint from Illinois Central's operation on their automobiles and homes. However, the Agency stated that the temporary painting facility would minimize overspray. The Agency did not state how effective the temporary facilities would be in reducing the impact on area residents.

The Agency recommended that the Petitioner be granted a variance from Rule 202(b) and Rule 203(a) of Chapter Two until May 30, 1975, subject to certain reporting requirements as well as the successful operation of the temporary overspray shielding walls. The Agency stated that the December 1975 date was reasonable.

A hearing was held on September 25, 1974, in Marion County, Illinois. Respondent began the hearing by amending its Amended Petition in two respects. First, Respondent agreed with the Agency that Rule 203(a) not 203(b) was the applicable rule regarding the particulate emissions. Second, Respondent sought a variance until March 1, 1976, instead of the original December 31, 1975, date in the Amended Petition. Respondent called one witness to establish arbitrary or unreasonable hardship under Section 35 of the Act. The Agency called no witnesses and no citizens came forward to testify during the hearing. The testimony by the Illinois Central employee established that the December 1975 deadline could not be met, because no bids had been submitted on Petitioner's original contract proposal; changes were made in this contract, and all bid submissions were due by October 31, 1974 (R. 7). It is not known whether any contractors bid on this revised contract. The witness testified that other facilities were not available to do the paint work done at Centralia (R. 18). The temporary shielding walls have been installed. Twenty-five feet high walls have been constructed in an area relatively remote from the homes of area residents on plant property to permit paint spraying and undercoating.

The highest rail cars painted at the facility are seventeen feet tall (R. 13). The witness was uncertain how effective the walls were in controlling the 23% average overspray that occurs (R. 23, 25). He had only visited the site once for a brief period (R. 22); he was also unsure of whether overspray problems occurred near the ends of the shielding walls (R. 22); he did not know how close neighbors were to the spray operations (R. 22). The witness estimated that overspray was reduced by a factor of five because of the walls (R. 32). There are no walls at the old stenciling area where cars are sprayed for identification purposes. However, only 10% of the total paint sprayed at the facility is consumed in the stenciling procedure (R. 29). The facility employs 540 people (R. 12).

We grant the Petitioner a variance from June 26, 1974, until May 30, 1975. While we agree with the Agency that a variance is warranted, the inadequacies in the record do not permit us to decide whether a variance should be granted to a later date. Specifically, the record does not disclose the effectiveness of the temporary walls in protecting neighbors from overspray. While we note that no citizens came forward to the hearing to protest the variance grant, under Section 35 of the Act, Petitioner has the burden of proof to show arbitrary or unreasonable hardship. Second, it is unclear why the variance petition was filed as late as December 1973. Chapter Two became effective in April 1972. While delays after the decision to undertake compliance can be explained, the belatedness in start-up was not answered. Third, the evidence was unconvincing on the issue of whether compliance would be achieved by March 1976. The record does not disclose whether the contract has now been let or whether the fifteen month completion schedule is a term in the contract, not merely an estimate subject to continual revision.

ORDER

IT IS THE ORDER of the Pollution Control Board that Illinois Central is granted a variance from Rule 202(b) and 203(a) of Chapter Two from June 26, 1974, until May 30, 1975, subject to the following conditions:

- A. Petitioner shall submit monthly progress reports to:

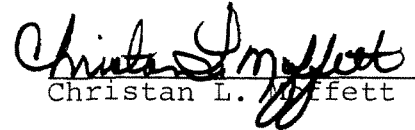
Illinois Environmental Protection Agency
Division of Air Pollution Control
Control Program Coordinator
2200 Churchill Road
Springfield, Illinois 62706

The first monthly report is due January 1, 1975. Each report shall indicate progress made toward completing the control program outlined in Petitioner's construction permit.

- B. Petitioner shall operate the temporary paint spray facility according to the specifications and location detailed in Petitioner's Exhibit 9 of the Amended Variance request.
- C. Petitioner shall operate this temporary paint spray facility to minimize overspray impact on the public until the completion of its new paint spray operation.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of November, 1974, by a vote of 4 to 0.


Christan L. Moffett