

ILLINOIS POLLUTION CONTROL BOARD
April 10, 1975

DARLING & COMPANY,)
)
 Petitioner,)
)
 v.) PCB 75-18
)
 ENVIRONMENTAL PROTECTION)
 AGENCY)
)
 Respondent.)

Mr. Joseph J. LaRocco, appeared for Petitioner;
Mr. James K. Jenks, Assistant Attorney General, appeared for Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin)

Petitioner, Darling & Co., (Darling), requests an extension of a variance from Sec. 9(a) of the Environmental Protection Act (Act), previously granted by the Pollution Control Board (Board) on March 14, 1974. The Petition seeks an extension of that variance from January 31, 1975 to December 31, 1975.

The prior case originated on November 3, 1971, when the Environmental Protection Agency (Agency), charged Darling with violations of Sec. 9(a) of the Environmental Protection Act and Rules 2-2.31 (f) and 2-2.41 of the Rules and Regulations, of the Air Pollution Control Board for its glue-making facility at 42nd St. and Ashland Ave., in Chicago (PCB 71-348). On February 25, 1972 Darling filed a Petition for Variance in response to the aforementioned action. The Variance was requested from Sec. 9(a) of the Act, until January 31, 1975, a period of 27 months (PCB 72-73).

Darling requested the variance in PCB 72-73 so that it could continue to operate its glue plant at 42nd St. and Ashland Ave. until it completes construction of a new and modern plant at its 45th St. facilities. The 42nd St. plant has been in operation since 1882 and probably could not be brought into compliance with the Act. The glue plant employs about 100 people directly with an additional 139 support employees (PCB 72-73, p. 9).

Those two cases, PCB 71-348 and PCB 72-73, were consolidated by the Board, and an Order was issued March 14, 1974 which, in part, granted Darling a Variance from Sec. 9(a) of the Act until January 31, 1975. Darling was to have completed the construction of its new glue plant by that time. That Variance was granted subject to several conditions, including the submission of various reports and compliance plans to the Agency.

This Petition for Variance, to December 31, 1975, alleges that since the entry of the Order in PCB 71-348 and PCB 72-73, Darling has made a diligent effort to complete the construction of its new glue plant at 1245 W. 45th St., Chicago, Illinois. But due to numerous delays in securing the new equipment, and problems encountered in securing the necessary engineering consultant services, the Petitioner cannot complete the new plant by January 31, 1975.

Petitioner further alleges that based on present commitments which it has obtained from the manufacturers and fabricators of machinery it has ordered, and based on the work schedule of the construction company engaged to complete the building after the installation of the equipment, it will require an additional eleven (11) months, or until December 31, 1975, to complete the new facility (Pet. 1 & 2).

A hearing was held on February 28, 1975, at which testimony was given by Clark B. Rose, Vice-President of Darling, Thomas F. Mitchell, Director of Research and Chief Chemist of Darling, Herbert W. Wojcik, General Superintendent of Darling, and Laxi N. Kesari, Environmental Protection Engineer with the Agency's Division of Air Pollution Control.

Petitioner submitted a number of photographs, both with its petition and during the hearing, showing equipment at the new plant, a good deal of it already installed. Mr. Rose testified that \$3.5 million had already been expended on construction of the new plant, and that the final cost will approach \$5 million (R. 13).

Mr. Mitchell detailed Petitioner's improved housekeeping, equipment maintenance, and elimination of certain processes which were the cause of odors at the old plant (R. 24-29). Darling's success in the suppression of odors at the old plant, during the period of the prior variance, was confirmed by Mr. Kesari, of the Agency, who testified that he contacted various people in the area, and all agreed that the improvement was great (R. 52-55). He was not certain however, that all persons in the area, including those who had not been contacted, might not still find odors objectionable. But this is problematical; there were no citizen complaints for at least a year previous to the hearing (R. 57).

Mr. Wojcik went into some detail on the nature of the delays experienced in completing the new glue plant at 45th Street. These included delays in equipment delivery, engineering errors, (R. 47), steel delivery delays, (Pet. Report to Agency, p. 3), and changing engineering consultants, (Pet. Report to Agency, p. 12 & 13). It seems clear from the record that Petitioner has proceeded in good faith, and that the construction and equipment installation delays experienced thus far cannot be blamed on Darling.

The Agency has challenged the proposed completion dates, both for the conclusion of contract work and the shakedown period necessary for normal operation of the new plant. The Agency offered little evidence to support its position, however, and failed to overcome the weight of evidence presented by Darling.

At the February 28, 1975, hearing, the Agency also raised a new ground for its objection to a grant of variance in this case. In its closing argument, the Agency in effect stated that the evidence presented at the hearing showed compliance with Sec. 9(a) for the old Darling plant. The Agency noted the "great steps" made by Petitioner in reducing the odor problem at the old plant, and stated that the progress was in fact so great that a variance is simply not necessary (R. 61).

Had the Agency further pursued this tack with evidence at the hearing, the Board might have been disposed to consider that argument more thoroughly. But the Agency here is relying on the presentation made by Petitioner regarding good faith attempts to abate an existing problem at the old plant. That presentation, while undoubtedly demonstrating such good faith and considerable progress toward compliance, is insufficient to show that Darling is no longer in need of a Variance. The Agency's witness stated that the citizens contacted no longer complained of "strong" odors, and his further testimony is by way of comparison with the considerable problem which previously existed (R. 53). There has been no demonstration of a complete abatement, only a comparative one.

It should be noted, though, that Petitioner was delinquent in reporting to the Agency under the terms of the previous Variance. To excuse this failure, Petitioner noted that the subjects of the required reports had not changed materially during several reporting periods, and that it felt there was no need to produce duplicative paperwork. Darling stated that it would be willing to make all reports required under an extension of the variance. Petitioner is warned that such reporting conditions are part of the Variance and failure to fulfill all the terms endangers the continuance of the variance; Petitioner is not to conclude unilaterally that the conditions to a Variance are meaningless or unnecessary.

We are granting Petitioner's request for a variance for the following reasons:

1. Petitioner has submitted and followed a strong program for abatement (closing of old plant and building a new plant at a cost of approximately \$5,000,000).
2. Petitioner has, through a strong maintenance program and abandonment of certain processes, already achieved major abatement objectives at the old plant.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Darling and Co. is granted a variance from Sec. 9(a) of the Environmental Protection Act for its 42nd Street plant from January 31, 1975 until December 31, 1975, subject to the following conditions.

a) The present compliance program at its glue plant located at 4201 S. Ashland Ave., Chicago, Ill., detailed in the letter from Darling to the Agency and dated February 24, 1975, shall be stringently continued; Darling & Co. shall submit monthly reports to the Agency reporting on the compliance program.

b) Darling & Co. shall diligently pursue its construction program of completing its new glue plant at 45th St. and carry out the shakedown operation with all due speed; Darling & Co. shall submit quarterly reports to the Agency starting 30 days from the issuance of this Order, which detail the progress of the construction as specified in the compliance plan previously submitted.

c) Petitioner shall within 30 days from the date of this Order modify the previously posted performance bond to guarantee compliance with this Order and to conform to the new time period.

Mr. Henss Dissents.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion & Order were adopted on the 10th day of April, 1975 by a vote of 3 to 1.


Christian L. Moffett, Clerk
Illinois Pollution Control Board