

ILLINOIS POLLUTION CONTROL BOARD
November 13, 1975

BIRD & SON, INC.,)
)
 Petitioner,)
)
 v.) PCB 75-166
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Mr. William R. Carney and Mr. George J. Casson, Jr.,
Attorneys, appeared for the Petitioner;
Ms. Kathryn Sheehan Nesburg, Attorney, appeared for
the Respondent.

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

Petition for Variance was filed by Bird & Son, Inc.,
(Bird & Son), on April 21, 1975, seeking relief from
Rules 103(b)(2) and 203(g)(1)(A) of Chapter 2: Air Pollution,
of the Pollution Control Board, (Board), Rules and Regulations.
PCB Regs., Ch. 2, Rules 103(b)(2), 203(g)(1)(A). On
April 25, 1975, the Environmental Protection Agency, (Agency),
filed an Objection and Motion for Hearing and on May 15, 1975,
the Board entered an Interim Order authorizing a hearing. A
Recommendation was filed by the Agency on June 10, 1975, and
Petitioner filed a Reply Memorandum in support of its Petition
on September 29, 1975.

A hearing was held in Chicago on October 3, 1975, at
which time very little testimony was taken, and the parties
indicated a desire to rely on the pleadings previously filed.
The important matters which were noted at the hearing are as
follows:

- a. Bird & Son's facility which is the
subject matter of this case is now in compliance
with the applicable particulate regulations,
pursuant to its previously filed compliance
plan, and has been in compliance since
September 17, 1975, (R. 4,8).

b. All proper EPA permits for the subject facility were issued prior to September 17, 1975, (R. 8).

c. The Agency stipulated that no enforcement action would be brought against Bird & Son for violations from May 30, 1975 to the date of hearing, October 3, 1975, (R. 6).

Bird & Son runs a roofing felt mill on the south side of Chicago, more fully described in Bird & Son v. EPA, PCB75-4 (April 24, 1975). Emissions of particulate matter subject to the limitations of Rule 203(g)(1)(A) were generated by a coal-fired boiler at that plant in excess of the amounts allowed under that Rule after May 30, 1975. Prior to that date, Bird & Son had an operating permit for the boiler in question, under a compliance plan calling for conversion to oil by May 30, 1975. Bird & Son sought this Variance for a period of six months after May 30, 1975, claiming that it was unable to meet that compliance plan, and operate within the requirements of Rule 203(g)(1)(A), due to an inability to obtain fuel oil commitments and unavoidable delays in the delivery of equipment necessary for the conversion from coal to oil.

We shall deny the Petition for two reasons:

a. From the matters adduced at hearing, it appears that Bird & Son is no longer in need of a shield from prosecution from the Agency.

b. Despite an able attempt in its Reply Memorandum of September 29, 1975, Bird & Son has failed to show that its emissions during the requested period of Variance would not cause or contribute to violations of the national ambient air quality standards for particulate matter. (Such a showing was expressly required in our Interim Order of May 15, 1975.)

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 the Petition for Variance in this matter be dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13th day of November, 1975 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board