

ILLINOIS POLLUTION CONTROL BOARD

March 6, 1975

MORTELL COMPANY, )  
Petitioner, )  
 )  
v. ) PCB 74-416  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
Respondent. )

Mr. Patrick J. Phillips, attorney for Petitioner.  
Mr. Peter E. Orlinsky, attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On November 8, 1974, the Mortell Company filed its Petition for Variance with the Pollution Control Board (Board). Petitioner sought a variance from Rules 102, 622, 651, and 652 of the Air Pollution Regulations (Chapter Two) for its asbestos-emitting ribbon and caulk mixers at its Kankakee, Illinois plant. The variance was requested until November 1, 1975, to enable it to install 13 bag houses to limit the asbestos emissions to levels set out in Chapter Two. Rule 102 prohibits air pollution; Rule 622 requires an operating permit from the Environmental Protection Agency (Agency); Rule 652 and 651 of Chapter Two require pollution control equipment for asbestos exhausts and limit emissions of asbestos fibers to 2 fibers per cubic centimeter of air and prohibits visual emissions of asbestos. Rule 651 of Chapter Two became effective on June 30, 1972.

The Mortell facility manufactures sealants and coatings through the operation of ten (10) ribbon mixers and seven (7) caulk mixers. The coatings, blended in the ten ribbon mixers, are used for sound insulation and in automobile undercoating. If all mixers are operated simultaneously, 16,676 pounds of coatings per hour containing 2.93% asbestos fibers are processed. The sealants, blended in the double-arm caulk mixers, are used by the automobile industry and for general household repairs. If all mixers are operated simultaneously, 3,167 pounds of sealants per hour containing 47.14% asbestos fibers can be processed.

Petitioner alleged that the ten ribbon mixers emit 3.57 pounds/hour of particulate matter and that the seven caulk mixers emit 0.0274 pound of particulate matter per hour. Petitioner also alleged that it did not become aware until July 5, 1974, that it was violating the limitations set out in Rule 651 of Chapter Two. Stack tests on June 13 and 14, 1974, revealed emission rates ranging from 56.29 fibers per cc to 285.4 fibers per cc. Visual emissions were also observed.

The Environmental Protection Agency (Agency) filed an objection to the grant of the variance on November 26, 1974; it moved that a hearing be held pursuant to Section 37 of the Environmental Protection Act. On December 5, 1974, the Board decided that a hearing should be held for this case.

On January 7, 1975, several weeks before the scheduled hearing, the Agency filed its Recommendation stating that it opposed the variance because, in light of the potential harm from asbestos emissions, the timetable of achieving compliance by November 1975 was inordinately long. The Agency believed that the 13 bag houses to be installed by Petitioner to control emissions would bring the facility into compliance. The Agency stated that were Petitioner to hire outside contractors and shut down more than one line at a time, the entire project could be completed by the end of May 1975. Agency visits during 1974 noted housekeeping deficiencies in possible violation of Rule 621(b), (c), and (d). Improvement in housekeeping practices during the last few months of 1974 was noted.

On February 5, 1975, Petitioner waived the 90-day decision requirement until 30 days after the transcript of the hearing was filed with the Board. The transcript was filed on February 5, 1975.

The hearing was held on January 21, 1975, in Kankakee, Illinois. No citizens came forward to testify concerning the variance. The evidence at the hearing went primarily to the issue of whether Mortell is also in violation of Rule 621(b), (c), and (d) of Chapter Two as alleged by the Agency in its Recommendation. Near the close of the hearing, the Agency admitted that Mortell has a valid program for compliance with Rule 621(b), (c), and (d) (R.55). While Petitioner's testimony was helpful to show its efforts to comply with Rule 621, such testimony did not answer the main issue of whether Petitioner's program of compliance is excessively long.

Some evidence was offered on the issue of the reasonableness of the November 1, 1975, deadline. A construction permit to install the 13 bag houses to achieve compliance was received from the Agency on November 21, 1974. The total cost of the project is approximately \$60,000 (R. 26). The first installment of bag houses, scheduled to arrive by January 1, 1975, has been delayed (R. 38). At the present time the bag houses are to be delivered according to the following schedule (Pet. Ex. 20):

<u>Number of Bag Houses</u>	<u>Expected Delivery Date</u>
First 4 units	February 1, 1975
Next 4 units	April 30, 1975
Final 5 units	July 31, 1975

Petitioner estimated that using its own personnel, it would take until the end of 1975 to have all the bag houses installed and properly operating (R. 42). On cross examination, the witness

stated that 90 days from the date of delivery was sufficient time to complete installation (R. 43). While Petitioner's claim of actual notice of violations was not refuted, the evidence indicates that the Agency noted possible violations in its transmittal letter of April 26, 1974, (Pet. Ex. 1).

We grant the variance according to the time schedule set out in our Order. While Petitioner has made good faith efforts to comply since it became aware of the violations, the potential harm from the asbestos emissions mandates a tighter compliance schedule than that suggested by the Petitioner. Mortell has had constructive notice of its violations since the June 30, 1972, date requiring compliance. The delay is partially self-imposed. While the ordered schedule of compliance may necessitate hiring outside help to install the bag houses, Petitioner's reluctance to fulfill its legal obligations means that additional expenses result from its own past inaction. Although the record discloses that Mortell's facility is located in a primarily industrial area, there are also nearby residents who deserve protection as soon as possible because of the hazardous nature of the asbestos emissions. We are giving Petitioner 75 days to install each of the three groups of bag houses after their projected delivery dates. This is sufficient time under the circumstances of this case.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Petitioner is hereby granted a Variance from Rules 102, 622, 651, and 652 of Chapter Two from November 8, 1974, to October 15, 1975, except to the extent and subject to the conditions set out below:

1. Petitioner shall install and have operational by April 15, 1975, the bag houses scheduled for delivery on February 1, 1975.
2. Petitioner shall install and have operational by July 15, 1975, the bag houses scheduled for delivery on April 30, 1975.
3. Petitioner shall install and have operational by October 15, 1975, the bag houses scheduled for delivery on July 31, 1975.
4. During the installation of the first eight bag houses, Petitioner shall utilize mixers which have been equipped with bag houses before using mixers without bag houses.
5. Upon the completion of the first eight bag houses, Petitioner shall operate only those mixers which are equipped with bag houses.

6. Petitioner shall require every employee associated with asbestos handling to vacuum clothing before leaving Petitioner's facility.

7. Commencing 30 days after the Order herein, and on or before the 15th of each month thereafter, Petitioner shall submit reports to the Agency detailing all progress made toward compliance. Said reports shall include delivery dates, installation dates, and reports of mixers used during the reporting period. Reports shall be sent to: Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706.

8. Within 30 days of the Order herein, Petitioner shall execute a performance bond in the amount of \$30,000 in a form acceptable to the Agency. The purpose of said bond is to assure compliance. Bond should be sent to: Environmental Protection Agency, Fiscal Services, 2200 Churchill Road, Springfield, Illinois 62706.

9. Within 30 days of the installation of the final bag house, Petitioner shall have stack tests performed by an independent testing company. The Agency shall be notified at least five (5) days prior to the tests and shall have the right to witness all tests. Test results shall be sent to the Agency at its paragraph 7 address as soon as they become available.

10. Petitioner shall obtain all necessary Agency permits.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6<sup>th</sup> day of March, 1975, by a vote of 3 to 1.

Christan L. Moffett (gn)  
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