

ILLINOIS POLLUTION CONTROL BOARD
April 24, 1975

KING-SEELEY CO., Thermos Division,)
)
Petitioner,)
)
v.) PCB 75-159
)
ENVIRONMENTAL PROTECTION AGENCY)
)
Respondent.)

INTERIM ORDER OF THE BOARD (by Mr. Zeitlin)

The Petition in this matter was filed on April 15, 1975, seeking extension of a Variance previously granted by the Pollution Control Board (Board) in King-Seeley Co., Thermos Division v. EPA, PCB 74-107, 12 PCB 397 (1974). The Variance in that case was granted with regard to the limitations of Rule 205(f) of Chapter 2: Air Pollution of the Board's Regulations, which limits the emissions of organic materials. PCB Regs., Ch. 2, Rule 205(f). Petitioner now states that it will be able to obtain solvents whose use will not result in violations of this Rule, and asks only permission to use up limited, existing stocks of those solvents for which it was granted the earlier Variance.

The Board cannot decide the merits of the case on the Petition before us at this time. Since the filing of this Petition, the U.S. Supreme Court has announced a decision which vitally affects the procedures under which this Board will henceforth grant Air Variances. The April 16, 1975 decision in Train v. N.R.D.C., 43 U.S.L.W. 4467 (U.S. April 16, 1975), gives us several tests which we will follow in all cases of Variances from the Air Pollution Regulations. (Our Authority to so act is clear under Sections 5(b), 5(c) and 26 of the Environmental Protection Act, Ill. Rev. Stat. Ch. 111½, Sec. 5(b), 5(c), 26 (1975).)

As we interpret the Court's decision, we shall not, in essence, grant variances beyond July 31, 1975 which result in violations of the Primary Ambient Air Quality Standards adopted by the Board in R 72-7, May 3, 1973. Insofar as the instant Petition fails to show that such a violation would not result from the grant of the requested Variance extension, the Petition is inadequate.

In explanation, the Board has in the past shown the relationship between achievement and maintenance of the Primary Ambient Air Quality Standards, and the subsequent effect on the public. PCB Regs. Ch. 2, Rule 301 (Preamble). Board Procedural Rule 401(c) requires that a Variance Petition show the effect that a discharge

would have "on the public, including the effect that continued discharge of contaminants will have upon the air, water or land." PCB Regs., Ch. 1, Rule 401(c). We now decide that Rule 401(c) requires a showing of the effect of a new or extended Variance on maintenance or achievement of the Ambient Air Quality Standards, as shown in Part III of Chapter 2: Air Pollution, of our Regulations. PCB Regs. Ch. 2, Rules 301-312.

Specifically, we will require that a Petition show the following:


1. Whether the ambient air quality of the area effected by the variance meets the Primary Ambient Air Quality Standards adopted by the Board;
2. If the emission source is contained within an area which does meet or exceed Ambient Air Quality Standards, that its emissions, alone or in conjunction with other sources, will not cause such a violation, or cause a failure to maintain the applicable standards;
3. If the emission source is contained within an area which does not currently meet or exceed Ambient Air Quality Standards, that its emissions, alone or in conjunction with other sources, do not cause or contribute to such a violation.

A Petition for Variance which fails to make such a showing shall be deemed inadequate under Procedural Rule 401(c).

Petitioner shall amend the Petition within 45 days to provide such a showing. Failure to timely file the Amended Petition with the Board and the Environmental Protection Agency shall render the Petition herein liable to dismissal for inadequacy. The 90-day decision period set by statute shall run from the date of filing the additional information.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Interim Order was adopted on the 24th day of April, 1975 by a vote of 4 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board