

ILLINOIS POLLUTION CONTROL BOARD  
September 12, 1974

GRANITE CITY STEEL

vs.

ENVIRONMENTAL PROTECTION AGENCY

PCB 74-34

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

Petitioner filed a variance petition on January 24, 1974 seeking an extension of a previously granted variance from the Air Pollution Control Regulations and Board Order (EPA v. Granite City Steel, PCB 70-34 (April 25, 1972), and extended in Granite City Steel v. EPA, PCB 73-26 (May 31, 1973)). On March 14, 1974, the Agency filed a recommendation to grant the variance request subject to certain conditions. Fourteen days of hearings were held on the request.

On April 18, 1974 the Board granted Petitioner an Interim Variance Extension until June 18, 1974, after Petitioner filed a conditional waiver of the 90-day decision rule on April 15, 1974. Petitioner stated that hearings which were begun on March 20, 1974 were scheduled beyond April 24, 1974, the date upon which a decision was required by Section 38 of the Act.

On May 21, 1974, Petitioner again filed a conditional waiver, alleging that hearings were scheduled through June 28, 1974 and would not be completed prior to June 18, 1974, the date the interim variance and conditional waiver of Section 38 of the Act expired. On May 29, 1974, the Board granted Petitioner the requested interim variance extension until July 19, 1974.

On July 16, 1974, Petitioner filed an interim variance extension request and a conditional waiver until August 18, 1974, because "the parties to this proceeding being and having been engaged in discussion directed toward amicable resolution of the issues." On July 18, 1974, the Board granted Petitioner an interim variance extension until September 17, 1974, because hearings were still in progress and the parties were discussing settlement. On July 19, 1974, Petitioner filed a waiver until September 17, 1974.

Petitioner filed a conditional waiver and request for an interim variance extension, on September 11, 1974, for 59 days until November 15, 1974, alleging that the parties "are actively engaged in determining the appropriate state of the art of coke oven pushing which is available for application to Granite City Steel's facilities in Granite City, Illinois and hearings have been suspended until this subject can be fully explored." The last hearing was held on May 7, 1974.

Procedural Rule 311 prohibits continuances beyond forty-five days unless granted by order of the Board. The Board has not received a request for continuance relating to the "suspension of hearing" pending negotiations. The July 18, 1974 order required Petitioner to file the available transcripts. These were filed on August 6, 1974. Meaningful review of this partial proceeding was greatly hindered by the inability of the Board to review the transcripts with the necessary aid of the Exhibits filed at the hearings. Petitioner has not carried his burden to establish an arbitrary and unreasonable hardship.

The Board has decided not to grant Petitioner another interim extension. If such request were granted, Petitioner would have been granted variance extensions to within sixty days of one year from the date Petitioner filed the original variance extension petition without presenting the Board with a complete and adequate record upon which to evaluate the request. Three previous interim variance extensions were granted to Petitioner in order to allow Petitioner to present a complete record. This leniency by the Board has been abused in this case. If the Board would have again granted Petitioner's request for an interim variance, the Board would have abrogated its responsibility of reviewing the facts to determine if a variance, a shield from prosecution, was warranted. Such action would not have provided protection to the Citizens of Illinois.

Since Petitioner's request is dismissed without prejudice, Petitioner is free to file another variance request and incorporate the partial record generated in this proceeding.

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

ORDER

The Pollution Control Board denies Petitioner's motion for an interim variance and dismisses Petitioner's variance petition without prejudice.

IT IS SO ORDERED.

Mr. Marder dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 12<sup>th</sup> day of September, 1974 by a vote of 4-1.

