

ILLINOIS POLLUTION CONTROL BOARD
April 24, 1975

LAKEWOOD ENGINEERING & MFG. CO.,)
)
 Petitioner,)
)
 v.) PCB 75-42
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

Lakewood Engineering & Manufacturing Company (Lakewood) filed this Petition for Variance from Sections 8 and 9 of the Environmental Protection Act (Act) on January 27, 1975. Ill. Rev. Stat. Ch. 111½, Sec. 8, 9 (1975). As will be shown below, the Pollution Control Board (Board) interprets this as a request for extension of the previously granted Variance from the requirement of Rule 205(f) of the Board's Air Pollution Control Regulations. Lakewood Engineering & Manufacturing Co. v. EPA, PCB 74-173, 13 PCB 265 (1974).

The Board on August 1, 1974 granted Lakewood a Variance from Rule 205(f), which Variance expired on February 1, 1975. The Board in that case found that due to the unavailability of exempt solvents, Petitioner could not achieve compliance with the Rule 205(f) limit of 8 lbs./hour of organic material emissions. The Board also noted that Petitioner was causing the emission of approximately 59 lbs./hour of organic material as a result of paint spraying and drying connected with the manufacture of electric fans at Lakewood's Chicago facility 13 PCB at 265.

In its Petition, Lakewood again alleges that exempt, nonphotochemically reactive solvents are still unavailable. In support of its Petition, Lakewood submitted several letters from its paint and solvent supplier stating that such exempt solvents remain unavailable, and will continue to be unavailable throughout 1975.

On March 10, 1975 the Environmental Protection Agency (Agency) filed an Objection to the Petition for Variance and Motion for Hearing. In an Order dated March 13, 1975, this Board denied the Agency's Motion, and ordered the case held for an Agency Recommendation. The Agency Recommendation thereafter filed on March 25, 1975, suggests that the Board deny Lakewood's Petition for Variance. No hearing was held in the matter.

The Agency Recommendation clarifies several matters which cannot be determined on the face of Lakewood's Petition. The Agency pointed out that the Petition herein relates to the prior Variance in PCB 74-173. Further, the Agency alleges that Petitioner has failed to comply with the conditions imposed as part of the Variance granted in the earlier case. The Agency alleges that Lakewood has failed to file a compliance

plan, and has not submitted regular monthly reports to the Agency, both actions required under the prior Variance. Of particular importance in this matter, the Agency alleges that Lakewood's claim of exempt solvent unavailability is untrue, and submits that hydrocarbon emissions from the Lakewood plant are actually 248.2 lbs./hour during the peak season (February to June).

The Board will not grant the Variance requested by Petitioner. This denial, however, would be reached by the Board even in the absence of an Agency Recommendation that the Variance be denied.

First, Lakewood requests relief from Sections 8 and 9 of the Act. It is patently clear that the Board cannot grant a Variance from Section 8 of the Act. That Section sets out only the findings and intent of the General Assembly in enacting Title 2:Air Pollution, of the Act. It is beyond the power of the Board to grant a Variance from such findings and purposes; the Board is instead bound by them in all its actions relating to air pollution.

Nor can the Board grant Petitioner its requested Variance from Section 9 of the Act. Although the Board might make inferences, based on *other information contained in the Petition* - (notable primarily for its lack of clarity)- Petitioner does not specify which portion of Section 9 it seeks relief from. And it is unimaginable that a situation would arise wherein the Board would grant a general Variance, for any period, from the broad sweeping limitations of that Section.

Nor may the Board here grant a Variance from Rule 205(f) of Chapter 2. Even if the Board follows the Agency's lead, and assumes that Petitioner is seeking an extension of its Variance from Rule 205(f) as granted in the earlier case, Petitioner presents us with insufficient facts upon which such an extension could be based, much less to meet the requirements for a new Variance. Section 36(b) of the Act states that a Variance may be extended *only if satisfactory progress has been shown*. Petitioner's bald allegation of "diligent search and inquiry" is not supported in its Petition. Petitioner has shown no progress towards compliance. Rather, it simply asks for an extension of its Variance by one year or until exempt solvents become available, whichever is sooner. (It should also be noted that Lakewood does not state with certainty when, if ever, exempt solvents will be available.)

Further, the Petition is on its face contradictory. Lakewood requests a Variance until exempt solvents become available, but notes that it could achieve compliance on or before May 30, 1975 by the use of high-solid paints.

Petitioner has not met its burden in this matter. It has failed to show either satisfactory progress to date, or unreasonable hardship should this Variance be denied. Petitioner may, of course, return to the Board and show that these and the other requirements for a Variance have in fact been met; but if it chooses to do so, it must adequately present the Board with a sufficient basis on which to rest its decision.

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 in this matter be dismissed without prejudice.

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


Christian L. Moffett, Clerk
Illinois Pollution Control Board