

ILLINOIS POLLUTION CONTROL BOARD
December 13, 1973

IN THE MATTER OF THE MOTION FOR STAY
OF SHELL OIL COMPANY

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R72-2

ORDER OF THE BOARD (by Mr. Dumelle):

Shell Oil Company, on September 26, 1973, filed a Motion to Stay the effective date of the Pollution Control Board's Noise Pollution Control Regulations, R72-2, alleging that Shell was a party in two proceedings pending before the Illinois Appellate Court in the First and Fifth Districts to determine the validity of the Noise Regulations. An Affidavit in Support of Motion for Stay, from E.A. Ballman, Manager of Shell Oil Company's Wood River Refinery, accompanied the Motion for Stay. The Environmental Protection Agency filed a Motion to Strike the Affidavit, on October 10, 1973, alleging that the Affidavit consisted of unfounded, conclusory hearsay and otherwise inadmissible statements. On October 25, 1973, the Agency filed a Memorandum and Response in Opposition to Petitioner's Motion to Stay. The Board heard oral argument on the Motion for Stay on November 15, 1973. Following the oral argument, the Board suggested that the parties meet and confer upon an agreed proposed Board order. Shell filed a Proposed Order to Grant the Stay on November 28, 1973. The Agency filed a Supplemental Response in Opposition to Granting the Stay and their Proposed Order to Deny the Granting of the Stay on December 12, 1973. After a careful review of the Noise Regulations as adopted, the Opinion of the Board which accompanied the Noise Regulations on July 31, 1973, material submitted by Shell Oil Company and the Environmental Protection Agency, and the oral argument presented before the Board, the Board decided to deny Shell Oil Company's Motion to Stay the effective date of the Noise Pollution Control Regulations on December 13, 1973.

The majority of Shell Oil Company's reasons for the grant of this Stay were considered at the time the Board adopted the Noise Regulations. The Board lacks any authority to compel

Shell Oil Company to actively proceed with its appeal of the noise regulations. Shell Oil Company could well delay the appeal process while it did nothing to reduce the amount of noise emanating from the Wood River Refinery. Such action could extend the length of time that people would be exposed to excessive noise from the Wood River Refinery.

Shell Oil Company alleges that it would be forced to expend a substantial portion of their alleged \$17 million dollars of compliance costs while appealing the regulation. However, the alleged \$17 million dollars is not completely relevant as only money for preliminary design work would be spent immediately. Shell's compliance cost was considered in adopting the regulations as Shell presented extensive testimony at hearings held prior to the adoption of R72-2. Based upon Shell's comments, Rule 208 (e) was adopted which exempted existing industries from residential nighttime limits (R72-2, Opinion, pp. 5, 24, 34, and 44). "By adding this exception, the economic impact of regulation is lessened by an amount equivalent to a 10 dB reduction in noise requirements" (R72-2, Opinion p. 31).

Shell has alleged that approximately 5 to 6 years would be needed before Shell would be in compliance with the regulation. This argument was considered in the adoption of the original noise regulations and Rule 209 (i) was added to provide refineries with a two year compliance date (R72-2, Opinion pp. 7, 8, 24, 34, and 44). The Board has recognized that Shell Oil Company is in a unique situation;

"...in that not only is it a very large refinery, but abuts the residential community of South Roxana, allowing only the width of the street for noise attenuation. Rather than basing a regulation on this unique situation, this could be handled in a variance proceeding. The rule that exempts existing noise sources from the nighttime limits also serves to reduce Shell's problems in complying with the regulation. Additionally, an extended two-year compliance date has been provided for oil refineries." (R72-2, Opinion p. 24).

Shell Oil Company has alleged a substantial loss in product production from the Wood River Refinery at the time of a national energy shortage (Paragraph 5 of the Affidavit in Support of the Motion for Stay by E.A. Ballman). Shell has not convinced the Board that modification of existing equipment and/or installation of new noise abatement equipment could not proceed during the normal downtime for inspection and maintenance.

While Shell Oil Company has alleged compliance cost of \$17 million dollars over a 5 to 6 year period, the Environmental Protection Agency alleged that Shell Oil Company for a:


"few hundred thousand dollars...should be able to comply with the proposed limits within the compliance schedule in Rule 209, because of the great amount of preliminary sound pressure level data already measured by Shell Oil Company and the availability of commercially produced noise abatement systems" (R72-2, Agency Exhibit 128, Part 4, Section 4 Conclusions).

Shell Oil Company has failed to convince the Board that a Stay in the effective date of the Noise Regulations is warranted. Therefore, the Board denies Shell Oil Company's Motion for Stay.

IT IS SO ORDERED.

Mr. Henss and Mr. Seaman dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 13th day of December, 1973 by a vote of 3-2.


Christan L. Moffett, Clerk
Illinois Pollution Control Board