

ILLINOIS POLLUTION CONTROL BOARD

APRIL 25, 1974

W. R. MEADOWS, INC.)
PETITIONER)
)
)
v.) PCB 74-56
)
)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)
)

JAMES MARTIN, ATTORNEY, in behalf of W. R. MEADOWS, INC.
KATHRYN NESBURG, ATTORNEY, in behalf of the ENVIRONMENTAL PROTECTION
AGENCY

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

This case comes to the Board on Petition filed February 5, 1974, by W. R. Meadows, Inc., for a variance for one year from Rule 205 (e) of Chapter 2 of the Board's Rules and Regulations.

The Agency filed its recommendation on March 13, 1974. The Agency recommends a variance be granted subject to certain conditions.

Hearing was held in the Kane County Court House, Geneva, Illinois, on March 29, 1974.

Petitioner manufactures a concrete curing compound that is used to provide a longer wearing concrete surface. The curing compound is applied wherever large amounts of concrete are used to prevent damage from evaporation of mixing water in the concrete. The largest use for the compound is in highway construction.

Rule 205 (e) prohibits the sale or use of architectural coatings which contain more than 20% by volume of photochemically reactive material in containers having a capacity greater than one gallon in the Chicago and St. Louis (Illinois) major metropolitan areas.

About 60% of the product is mineral spirits, which are photochemically reactive.

Hardship: Petitioner alleges as the reason for this variance the fact that it cannot receive non-photochemically reactive materials for its product, because of short supply and federal allocations. Petit-

itioner has contacted suppliers of these solvents and has not been able to obtain sufficient amounts of the exempt solvents. Two days before the hearing Petitioner contacted Shell Chemical Corporation, Exxon, Gulf Oil, Mobil Oil, and Union Oil companies and received negative responses to its attempts to order the exempt materials (R. 9-10). The Petitioner alleges hardship not only to itself, but also to contractors who will not be able to cure their concrete or will have to cure it at a much greater cost. Petitioner further alleges that the public will also be injured through higher costs for road construction, or, in the alternative, roads that will not be of the highest quality.

Environmental Impact: Petitioner alleges and the Agency concurs that the environmental impact of granting this variance will not be significant. When applied the product is only used once, in an area where there is good ventilation. The evaporation time for the product ranges from 30 minutes to two hours, depending on weather conditions (R. 11). Less than 10% of the Petitioner's output goes to the Chicago and E. St. Louis areas (R. 12).

Rule 205 (e) is unique in that it restricts the sale as well as the use of the product. A variance for the sale of this product causes problems that do not exist in the normal variance case. First, Petitioner does not sell his products directly to the ultimate user of the product. He sells it to distributors, who have standing relationships with contractors. It is not unusual for Petitioner to sell his product to a distributor in Springfield and have the ultimate purchaser use it in Chicago (R. 13). By giving Petitioner a variance to sell the product to his distributors, we then must determine whether the distributors must also obtain variances. To this question, we answer no. The result of not reaching this conclusion would be to force all of Petitioner's distributors to file variance cases, which would do nothing more than reiterate the facts in this case. This result would be in fact no relief to Petitioner. We hold that a variance in a case from Rule 205 (e) granted to the manufacturer of a product covers the sale by the manufacturer's distributors to the ultimate user. This decision only applies to Rule 205 (e) cases.

The next question this case raises is whether the ultimate purchaser and user of the product must also apply for and receive a variance before he can use the product in the Chicago and St. Louis areas. The answer is yes. While the Board can extend the variance to the distributor, as there are no emissions caused by his transaction, the ultimate user will be causing the actual emission. The Board feels that without data as to the location of each application of the product, the amount to be used, the period of time in which it is to be used, and the character of the surrounding area near the application site, the Board can not grant a blanket variance for the use of the product.

Petitioner has indicated to the Agency (Agency Rec. P. 2) that it would perform research and development to try to find suitable alternate solvents and would also attempt to modify its product to be water-reducible.

The Board finds that there will be little or no environmental impact by granting a variance to Petitioner to sell his product. Hardship imposed on the public due to the grant of this variance would be far less than the hardship imposed on the Petitioner should the Board not grant a variance.

Petitioner will be granted variance from Rule 205 (e) of Chapter 2 for one year, subject to conditions stated in the Order.

It is the Board's feeling that Petitioner should send notice to his distributors that use of the concrete curing compound in the Chicago and St. Louis (Ill.) areas violates Rule 205 (e), unless the ultimate user obtains a variance from the Pollution Control Board under Title 9 of the Environmental Protection Act.

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

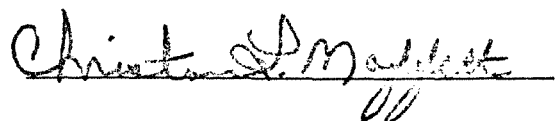
ORDER

IT IS THE ORDER of the Pollution Control Board that W. R. Meadows is hereby granted a variance from Rule 205 (e) until April 25, 1975, to allow the sale of its concrete curing compound in the Chicago and St. Louis (Ill.) major metropolitan areas, subject to the following conditions:

- A) Petitioner shall file, within 60 days from the entry of this Order, a compliance plan outlining its program to develop a water reducible product or a product with exempt solvents, with the Environmental Protection Agency.
- B) Petitioner shall file reports quarterly subsequent to the compliance plan filing, outlining progress as to the abovementioned compliance plan.
- C) Petitioner shall attempt to obtain exempt solvents, and whenever such solvents are available, shall use them.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 25th day of April, 1974, by a vote of 5 to 0.


Christan L. Moffett