

ILLINOIS POLLUTION CONTROL BOARD

November 14, 1974

CATERPILLAR TRACTOR COMPANY,)
)
 Petitioner,)
)
 vs.) PCB 74-253
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Richard J. Kissel, Attorney for Petitioner
Michael J. Ginsberg, Attorney for the EPA

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

Caterpillar Tractor Company filed Appeal of Permit Denial alleging that the Environmental Protection Agency improperly and wrongfully denied operating permits for 14 coal fired boilers at Caterpillar's Aurora, East Peoria and Morton plants.

This case is the sequel to PCB 73-63, a variance petition brought by Caterpillar for operation of these same boilers. In the variance case Caterpillar sought relief from certain sections of the Air Pollution Control Regulations. This relief was denied but the Agency was ordered to issue operating permits for the boilers for the sole purpose of protecting Caterpillar from prosecution for operating without permits. Specifically, the August 30, 1973 Order stated:

"The Agency [shall] issue operating permits with respect to the Aurora, Morton and East Peoria plants in order that Petitioner's present operations not be deemed in violation for operation without an operating permit"
(PCB 73-63)

The Agency found: excessive particulate emissions from the Aurora boilers, a lack of information about particulate emissions from the Morton boilers, and failure to submit acceptable compliance programs and project completion schedules for sulfur oxide emission control for all three plants. The Agency contended that in an opinion denying a variance the Agency should not be ordered to issue operating permits. However, finally the EPA did grant

permits "pursuant to the Illinois Pollution Control Board Order of August 30, 1973." The permits were for six months, expiring on July 2, 1974.

Caterpillar reapplied for the operating permits on or about March 28, 1974. The Agency refused to reissue the permits because Caterpillar had not submitted acceptable compliance schedules for the three plants. This appeal followed.

At issue is whether or not the Agency complied with the "intent" of the Board's August 30, 1973 Order when it issued operating permits of just six months duration. The Board Order did not specify the duration of the operating permits, but Caterpillar states that the Opinion and Order of August 30, 1973 clearly had the intent of requiring the Agency to issue operating permits with an expiration date of May 30, 1975. Caterpillar argues that the Agency lost its right to attack that Board Order since it failed to appeal.

The EPA now contends that the Board Order of August 30, 1973 is "a nullity in that it was beyond the scope of the Board's authority in that proceeding to issue an Order requiring the Agency to issue operating permits while denying the requested variance relief".

Alternatively, the Agency argues that it complied with a "reasonable" criteria when it issued the permits instead of appealing the Order. The Agency states that the intent of the Board's Order was to give Caterpillar a "reasonable" period of time, without threat of prosecution for operating without permits, to re-evaluate its time schedule for installation of scrubbers and submit a revised variance petition to the Board.

Caterpillar is installing flue gas desulfurization systems at its Joliet and Mossville plants. One plant will be equipped with a Zurn system while the other will evaluate the FMC system. After these two systems have been evaluated, a decision will be made as to which of the systems will be installed at the Aurora, Morton and East Peoria plants. Caterpillar informed the Board during the variance proceeding that it was "somewhat confident" that one or both of the pilot projects would be successful.

The Board commended Caterpillar for its industrial leadership in trying to solve its SO₂ problem. It was the Board's belief that Caterpillar should proceed as rapidly as possible with its project without threat of prosecution for operating without permits. For this reason the Board ordered the Agency to issue operating permits for Caterpillar's other three plants.

Caterpillar should have used this time to evaluate the two pilot systems and reach some kind of a corporate decision about SO₂

controls for the other three plants. The Board intended that Caterpillar be given enough time to review its options and come in with facts and information upon which a variance could be founded. The prior Order of the Board was in reaction to the fact that Caterpillar was moving forward with a control program, and it was designed to give Caterpillar a reasonable time to formulate its plan. Our records indicate that we have no more information about Caterpillar's intent now than we did over one year ago. Caterpillar should have made use of the time to gather the facts necessary for a variance and file a new variance petition. This Caterpillar has not done. The variance remains a viable option for Caterpillar but for some reason is not being pursued.

It is the finding of the Board that the Agency has substantially complied with the Board Order of August 30, 1973 and that the Agency did not abuse its discretion in denying permits beyond July 2, 1974. The Board therefore denies Caterpillar's permit appeal.

ORDER

It is the Order of the Pollution Control Board that the Environmental Protection Agency be affirmed in its current refusal to issue operating permits. The appeal of the Caterpillar Tractor Company is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 14th day of November 1974 by a vote of 5 to 0.


