

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1976

CATERPILLAR TRACTOR CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 76-131
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by Mr. Zeitlin):

The original Variance Petition in this matter was filed on May 7, 1976. In an Interim Order dated June 3, 1976, the Board found that Petition inadequate, and allowed Petitioner to file the required information.

Caterpillar thereafter filed an Amended Petition on July 15, 1976. The Board entered a further Interim Order, dated July 22, 1976, directing Caterpillar to expand on a certain statement in the Amended Petition, and also directing Respondent Environmental Protection Agency (Agency) to respond. The statement in question was,

. . . Caterpillar asserts that compliance schedules should not be necessary whenever:

(a) There are no regulations with which to comply (i.e., sulfur dioxide and particulate emission limitations) . . .

Both Caterpillar and the Agency responded to that Interim Order on August 9, 1976.

The difficulty with this matter stems from the Illinois Supreme Court's reversal, in Commonwealth Edison Co. v. Pollution Control Board, ___ Ill.2d ___, 343 N.E.2d 549 (1976), of certain of the Board's Air Pollution Control Regulations concerning particulate and sulfur dioxide emissions.

Until that reversal the Agency had been issuing operating permits under the Air Pollution Regulations upon a showing that the then applicable rules would be complied with. (See, Agency Response, filed August 9, 1976, at 2.)

Subsequent to the Court's decision, the Agency, claiming the absence of applicable emission limitations, has required, pursuant to Rules 103(b)(6) and 102 of the Air Pollution Regulations, that a permit applicant show its emissions will not "cause or threaten or allow," either "alone or in combination with contaminants from other sources," the prevention of "attainment or maintenance of any applicable ambient air quality standard."

Caterpillar's Petition and Amended Petition here claim that the requirement of such a showing presents an arbitrary and unreasonable hardship, in that compliance with this requirement would make "expensive modeling and monitoring . . . a prerequisite to obtaining an operating permit." Caterpillar consequently requests a Variance from Rule 103(b)(6).

As noted above and in our Interim Order of July 22, 1976, Caterpillar further requests that the Board find the compliance plan requirement unnecessary in the absence of applicable emission limitations. The Agency disagrees, and is of the opinion that the compliance plan requirement should be applied in this situation.

Caterpillar has not presented the Board with a valid reason to excuse the compliance plan requirement for its Variance Petition and Amended Petition, or the showing requirement of Rule 103(b)(6) itself. To excuse those requirements in this case would, if the requested Variance were granted, mean that the Agency would be effectively required to grant Caterpillar the requested permits, and Caterpillar would be bound to no emission limitation.

Effectively, no measurement of the emissions' effects on the environment would have been made prior to issuance of the permit.

It is the purpose of the permit system to prevent just such a situation. The submittal requirements of the permit system are designed to allow assurance that operation under a permit will not cause or contribute to environmental damage. If we were to grant a Variance from those requirements without requiring eventual compliance with an emission or air quality standard, the permit would serve no purpose whatsoever. Petitioner would be subject to no standards either before or after issuance.

We shall dismiss the instant matter, giving leave to Caterpillar to institute such future proceedings as may be applicable to its individual plant emissions and their individual components (i.e., particulates, SO₂).

IT IS SO ORDERED.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 2nd day of September, 1976, by a vote of 4-1.

Christan L. Moffett C/S
Christan L. Moffett, Clerk
Illinois Pollution Control Board

