

ILLINOIS POLLUTION CONTROL BOARD

December 13, 1973

IN THE MATTER OF THE MOTION FOR STAY)
OF SHELL OIL COMPANY) R72-2
)
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)

DISSENTING OPINION OF MR. HENSS AND MR. SEAMAN:

On September 26, 1973, Shell Oil Company filed its Motion seeking a Stay as to Petitioner of the effective date of this Board's Noise Regulations (R72-2), adopted July 26, 1973. Shell Oil is currently a petitioner in a proceeding entitled Shell Oil Company v. Illinois Pollution Control Board, No. 59460, now pending before the Appellate Court of Illinois, First District, and in a second proceeding entitled Amoco Oil Company, et al v. Illinois Pollution Control Board, No. 73-279, now pending before the Appellate Court of Illinois, Fifth District, which proceedings were brought pursuant to the Illinois Administrative Review Act, Chapter 110, Section 264, et. seq., seeking judicial review of the Noise Regulation as that Regulation applies to the Petitioner's Wood River facility.

Petitioner alleges that it will be subjected to a potential cost of \$17,000,000 if it attempts to bring its Wood River refinery into compliance with the standards imposed by the Noise Regulation, and that causing Petitioner to incur some of the costs of compliance while the Regulation is pending on review would impose an unreasonable and excessive burden upon Petitioner and would effectively deny Petitioner its remedy of challenging the Regulation.

Petitioner further alleges that it does not plan the installation of new equipment or the modification of existing equipment so as to increase noise levels while this cause is pending and that, based upon the lack of complaints received at the Wood River refinery, Petitioner believes the present noise emitted from the refinery is not disturbing the adjacent community.

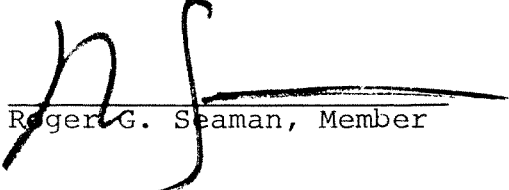
While a majority of the Board is not convinced that a stay is warranted in this cause, we would grant the stay as requested. We note that the Appellate Court addressed this issue in an action involving a somewhat analogous situation in A. E. Staley Manufacturing Company v. Environmental Protection Agency, 8 Ill. App. 3d 1018, 290 N.E. 2d 892. There, the Court held that the Pollution Control Board's refusal to stay the application of certain Regulations pending appeal

by one adversely affected by the Regulations, impinged on the aggrieved party's right to its day in court.

The issue here is whether the possible expense and injury which Petitioner might incur during the period for which the stay is sought would outweigh the potential harm to others. Petitioner is adversely affected by the Noise Regulation and has actively participated in the public hearings held prior to adoption of the Regulation. We are of the opinion that Petitioner's Motion is neither frivolous nor dilatory and should be granted.

Finally, we stress that our Opinion has been reached by an analysis of the particular fact situation presented by the Shell Motion and we do not suggest that there be an automatic stay where Petitioners have appeals pending. Accordingly, this minority would grant the Motion to Stay as requested by the Petitioner.


Donald A. Henss, Member


Roger G. Seaman, Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted this 7th day of February, 1974.

