

ILLINOIS POLLUTION CONTROL BOARD
December 13, 1979

INTERLAKE, INC.,)
)
 Petitioner,)
)
 v.) PCB 79-83
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

Petitioner on April 11, 1979 requested a variance from the requirements of Rule 203 of Chapter 2: Air Pollution until September 30, 1979 and from Rule 206(d) of Chapter 2: Air Pollution until the Board reached a final decision in the rulemaking proceeding designated as R78-1. This variance concerns the emissions from Petitioner's basic oxygen furnace melt shop in Riverdale. The Agency recommended that relief from Rule 203 be denied and that relief from Rule 206(d) be granted.

Later Petitioner moved the Board to dismiss the request for relief from Rule 203 without prejudice to any legal arguments.

On November 1, 1979 the Board deleted Rule 206(d) of Chapter 2: Air Pollution, thereby terminating R78-1. This deletion was filed with the Secretary of State and was effective on November 8, 1979.

On November 28, 1979 Petitioner urged the Board to defer final action in this matter until a public hearing is held which complies with Federal notice requirements. Federal notice, as described in 40 C.F.R. §51.4 is needed because Petitioner is requesting relief from Rule 206(d) beyond July 1, 1979 until November 8, 1979. The period beyond July 1, 1979 requires Federal approval as a revision to the Illinois Implementation Plan. Federal approval cannot be granted unless a properly noticed public hearing is held.

The threshold question in this case is whether Petitioner is entitled to a variance from a rule that no longer exists. Petitioner was one of the proponents in R78-1, the proceeding in which the Board examined carbon monoxide emissions from steel mills. The Board's findings were summarized in a Proposed Opinion which was adopted later as the Board's final Opinion. (In the matter of: Carbon Monoxide Emissions from Steel Mills, R78-1, September 20, 1979, November 1, 1979.) The Board concluded that compliance with the old

Rule 206(d) was either impossible or prohibitively expensive. While Petitioner and the other Chicago steel mills are probably contributing to violations of the National Ambient Air Quality Standard for carbon monoxide, their contribution is not significant. Consequently if Rule 206(d) still existed, the Board would easily conclude that denial of a variance in this instance would constitute arbitrary or unreasonable hardship.

Since this rule no longer exists, a variance would only act as a shield from prosecution for the period from April 11, 1979 when this proceeding was filed until November 8, 1979. The Board is generally not inclined to grant variances unless it has seen a commitment to come into compliance. In this case the logic which supported the Board's Order in R78-1 must be employed. Petitioner should not be held accountable for failure to comply with a rule which the Board has now found to be unreasonable.

The Board sees no reason to defer a final decision in this matter pending the outcome of another public hearing. The Board will simply condition this variance on compliance with Federal notice requirements.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Petitioner's motion to dismiss its request for a variance from Rule 203 of Chapter 2: Air Pollution without prejudice to any legal arguments is hereby granted.
2. Petitioner is hereby granted a variance from Rule 206(d) of Chapter 2: Air Pollution from April 11, 1979 until November 8, 1979 subject to the following conditions:
 - a) Petitioner shall hold a hearing in conjunction with the Agency to receive public comment on whether this variance should be approved by the Administrator of USEPA as a revision to the Illinois Implementation Plan.
 - b) The hearing shall be held only after proper notice has been given pursuant to 40 C.F.R. §51.4.
 - c) Within 45 days of the date of this Order, Petitioner shall execute a certification of acceptance and agreement to be bound to all the terms and conditions of this variance. The 45 day period shall be held in abeyance if this matter is appealed. The certification shall be forwarded to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 and shall read as follows:

CERTIFICATION

I (We), _____,
having read and fully understanding the Order
in PCB 79-83, hereby accept that Order and
agree to be bound by all of its terms and conditions.

SIGNED _____

TITLE _____

DATE _____

- 3. The Board hereby retains jurisdiction in this proceeding so that the additional hearing required by paragraph 2 (a) of this Order can be held under the Board's auspices.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13th day of December, 1979 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board