

ILLINOIS POLLUTION CONTROL BOARD
September 8, 2011

EXXONMOBIL OIL CORPORATION,)	
)	
Petitioner,)	
)	
v.)	PCB 11-86
)	PCB 12-46
ILLINOIS ENVIRONMENTAL)	(cons.)
PROTECTION AGENCY,)	(Variance - Air)
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On September 2, 2011, ExxonMobil Oil Corporation (ExxonMobil) filed a document that it captioned an “Amended Petition For Variance, Or In The Alternative, New Petition For Variance [in PCB 11-86]” (Am. Pet or New Pet.). The September 2, 2011 filing requests variance for the Joliet Refinery facility until May 19, 2019 from the Board’s rules at 35 Ill. Adm. Code 217, Subparts A, D, E, F, and Appendix H (NOx RACT Rule). The document was accompanied by the filing fee prescribed in Section 7.5 of the Environmental Protection Act (Act), 415 ILCS 5/7.5 (2010).

The filing was accompanied by a “Motion to Confirm Five-Day Notice for Hearing Pursuant to Section 38(b) of the Illinois Environmental Protection Act” (Mot.). Hearing is currently scheduled for September 19, 2011 in PCB 11-86, in which the Illinois Environmental Protection Agency (Agency) has filed a Recommendation that supports neither grant nor denial of the petition. ExxonMobil requests that, if the Board construes the filing as a new petition, that any hearing on the new petition also held on September 19, 2011. ExxonMobil cites as authority Section 38(b) of the Act, allowing for hearing on such petition within “five days of the notice of such hearing or thereafter”. Mot. at. 3-4, citing Alton Packaging Corporation v. IEPA, PCB 83-49 and 83-55 (Sept. 20, 1985) (“Section 38(b) grants unusual relief which clearly contemplates an unusually expeditious proceeding.”). ExxonMobil requests that the Board cause issuance of notice of hearing immediately, since:

- 1) the Initial Petition and the Amended/New Petition are the same, except for the change in compliance date, 2) the requested relief is the same, 3) the Act provides for an expedited notice period, and 4) it would be inefficient to hold two hearings on the same Petition, the Board should confirm that a five-day notice period is appropriate in this case. Mot. at 4.

ExxonMobil concluded by requesting that the Board rule on these issues at its September 8, 2011 meeting. *Id.*

ExxonMobil's filing was received by the Board electronically the afternoon of September 2, 2011, the Friday before the September 5, 2011 Labor Day Holiday. On September 6, 2011, the hearing officer initiated a conference call with the parties, in part to verify that counsel for the Agency had received the petition. Determining that the Agency's counsel had received the filing (which arrived during her scheduled absence from the office), the hearing officer requested that the Agency file any initial response it might have to the filing as soon as possible, but no later than the close of business on September 7, 2011.

Also on September 6, 2011, ExxonMobil filed a document captioned as "Update on Status of Ozone Standard" (Update). The filing relates that

On September 2, 2011, President Obama announced that the pending ozone standard (that was expected to be issued in July 2011) would be reviewed in 2013 and requested that Lisa Jackson, Administrator of the United States Environmental Protection Agency, withdraw the draft ozone standard at this time. *See Exhibit 1* (citation to White House website omitted). Update at p.1

The Agency filed its response in each case (Resp.) at about 11:00 a.m. on September 7, 2011. The Agency states that it "does not object to ExxonMobil's Motion". Resp. at 1. The Agency stated that, as before, the Agency "neither supports nor objects to ExxonMobil's request for variance as proposed." *Id.*

After consideration of the parties' filings, the Board accepts the September 2, 2011 ExxonMobil filing as a new petition for variance, filed within 20 days of the August 22, 2011 effective date of amendments to the Board's NOx RACT Rules in Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217, R11-24/ R11-26 (August 18, 2011)(extending general compliance deadline from January 1, 2012 to January 1, 2015 and eliminating the December 31, 2014 deadline for ExxonMobil's Appendix H units). The filing of the petition in PCB 12-46 stays the effect of the rule as to petitioner under Section 38(b) of the Act. 415 ILCS 5/38(b) 2010).

The next questions concerns holding hearing on the new petition in PCB 12-46 along with the old petition in PCB 11-86 on September 19, 2011 as scheduled, using the five day notice provision of Section 38(b) of the Act. The Board notes that ExxonMobil waived hearing in the PCB 11-86 petition. But, by order of May 23, 2011, "the Board, in its discretion, conclude[d] that a hearing would be advisable. *See* 35 Ill. Adm. Code 104.234(c) (2010)." There has been some citizen interest evidenced concerning this petition. *See* July 19, 2011 Comments of Citizens Against Ruining the Environment (CARE), PC1. The Board is persuaded by petitioner's arguments (Mot. at 4), and the Agency's lack of objection (Resp. at 1), that it would be inefficient to hold two hearings on what is essentially the same petition. The Board finds that there would be no unfair surprise to any party or to any interested person in requiring that all evidence, arguments, and public comment be introduced into the record at the same hearing on September 19, 2011.

Accordingly, ExxonMobil's motion for hearing in PCB 12-46, consistent with the notice provision of Section 38, is granted. The hearing officer and the Clerk are directed to provide notice.

The Board on its own motions consolidates PCB 11-86 and PCB 12-46 for hearing and decision. In so doing, however, the Board notes that the decision deadline in PCB 11-86 pursuant to waiver is December 1, 2011, which would require decision by the Board at its November 17, 2011 meeting. Absent additional waiver, the hearing officer is directed to close the record no later than October 17, 2011, to allow the Board *at least* 30 days for drafting and deliberation of a final opinion and order in the consolidated cases.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 8, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board