

In 1987, apparently in anticipation that its existing treatment facilities would not be able to meet new federal limitations, BFGoodrich began construction of a new wastewater treatment facility in order to upgrade its treatment system. BFGoodrich sought to have as much of its treatment process as possible above ground to control any leaks and prevent groundwater contamination, and also sought to achieve a better effluent. Essentially, "the project upgraded the method of biological treatment from an activated sludge basin with surface aerators to above ground biotreaters (tanks) with diffused air enhanced oxygen transfer with complete mixing." (Pet. at 2.)

The transfer of the biological mass to the new biotreaters occurred on November 9, 1987. Subsequently, BFGoodrich has "experienced difficulty in acclimating the biological mass to the new biotreaters, which has resulted in a general inability . . . to consistently comply with permit limits for BOD and TSS." (Agency Rec. at 4.) As a result of such difficulties, BFGoodrich sought, and was granted, a provisional variance on January 21, 1988 for both BOD and TSS from January 21, 1988 until March 8, 1988, in PCB 88-20.

Pursuant to Sections 304.120(b), 304.141(a) and BFGoodrich's NPDES permit, BFGoodrich has an effluent limitation of 20 mg/l for BOD and 25 mg/l for TSS. In its petition for variance, BFGoodrich is requesting the following effluent limitations: for BOD, a daily maximum of 120 mg/l with a monthly average of 60 mg/l; for TSS, a daily maximum of 70 mg/l with a monthly average of 35 mg/l. These are the same effluent limitations as BFGoodrich's earlier provisional variance in PCB 88-20.

COMPLIANCE PLAN

BFGoodrich's compliance plan includes installing: a third biotreater to increase the biological mass for degrading wastewater effluent; a polishing filter to reduce TSS discharges from its secondary clarifier; and a fourth rotary positive displacement blower. In its original petition, BFGoodrich stated that the above modifications would be made at the facility in September of 1988 and that the construction permit application was filed on July 25, 1988. BFGoodrich anticipates, and the Agency agrees, that the modifications to the wastewater treatment system will correct the mechanical problems which have complicated the acclimation process involved in maintaining the biological mass in the new biotreaters.

HARDSHIP AND ENVIRONMENTAL IMPACT

The Agency's recommendation lists numerous actions that BFGoodrich has taken in attempting to bring its plant into compliance. These actions include but are not limited to the following:

- a. reduced flows to the biotreaters;
- b. reuse of an old aeration basin;
- c. rental of a polishing filter;
- d. rental of a carbon filter system;
- e. transporting some specific organic wastewater stream for off-site disposal;
- f. reduced operation of the plant.

(Agency Rec. at 5.) The Agency also notes in its recommendation that BFGoodrich has "expended large sums of money to protect the environment in the interim as it has studied remedies for the unexpected failure of the biomass, to wit: (a) \$900,000.00 for new equipment, (b) \$5,000.00 per month for rental of the portable polishing filter, and (c) \$50,000.00 to \$100,000.00 per month for rental of the carbon filter", as well as the cost of reduction in production instituted to reduce flow to the biotreaters. (Agency Rec. at 5, 6.) The Agency thus states that to deny BFGoodrich a variance "to allow it to construct the additional capacity in the biotreater system followed by permanent polishing filters at this point would constitute an arbitrary and unreasonable hardship." (Agency Rec. at 6.)

Regarding environmental impact, BFGoodrich asserts that "there will be little or no adverse environmental impact during the requested variance period because of the quality of effluent expected to be produced and the other treatment already provided." (Pet. at 13.) The Agency agrees that BFGoodrich's discharge has a minimal effect. The Agency also notes that it is not aware of any public water supplies which would be adversely affected by the granting of this variance and that the nearest downstream water supply is located approximately 25 miles downstream in Peoria. (Agency Rec. at 7.)

FEDERAL LAW

BFGoodrich's amended petition addressed the Board's request for more information regarding whether the granting of this variance is consistent with applicable federal law.

The applicable federal law in this case are the effluent limitations for the organic chemicals and plastics and synthetic fibers category of point sources, promulgated on November 5, 1987 under the federal Clean Water Act. These federal effluent limitations, which regulate discharge generated by BFGoodrich as Federal Categorical Standards for Thermoplastic Resins and Special Organic Chemicals, take effect March 31, 1989. (52 Fed.

Reg. 42522 et seq., 40 C.F.R. 414.) The effluent limitations for those subcategories are as follows:

Thermoplastic resins:	BOD	TSS
daily maximum	64 mg/l	130 mg/l
monthly average	24 mg/l	40 mg/l
Specialty organic materials	BOD	TSS
daily maximum	120 mg/l	183 mg/l
monthly average	45 mg/l	57 mg/l

(40 C.F.R. 414.41, 414.81 (1988).)

In its amended petition, BFGoodrich asserts that the federal effluent limitations do not govern discharges from its plant because "at the time of promulgation in November, 1987, the effluent limitations were made applicable only to federal and state NPDES permits issued after the date of promulgation" and that since its NPDES permit was issued in May, 1986 with a 1990 expiration date, it is not presently bound by the federal effluent limitations. (Amended Pet. at 3.) BFGoodrich also points out that the effluent limitations requested in its variance fall within the federal effluent limitations, except for the monthly average for BOD. BFGoodrich states that the Board may nevertheless grant a variance consistent with federal law "in order to complete the additions to the new wastewater treatment system and bring it into operation." (Amended Pet. at 4.)

In response, the Agency states that the monthly average limit on BOD in the federal limitations is applicable only to the portion of total discharge attributable to Thermoplastic Resins. The Agency states that it does not have the information which would indicate those percentages. The Agency agrees with BFGoodrich that the Board may grant the variance consistent with federal regulations until and through March 30, 1989 but recommends that BFGoodrich's average monthly discharge limits for BOD be consistent with the federal limitations from March 31, 1989 until the variance terminates on August 31, 1989. BFGoodrich agreed to these conditions in its response to the Agency's recommendation.

CONCLUSION

Based on the record before it, including environmental impact, the Board finds that BFGoodrich has presented adequate proof that immediate compliance with Section 304.120 and Section 304.141(a) would impose an arbitrary or unreasonable hardship. For these reasons, the Board will grant the requested relief, subject to conditions contained in the following order.

The Board notes that BFGoodrich has requested that this variance begin on July 29, 1988, the day that it filed its petition for variance. Although commencing the variance on the date of filing does not allow for the 120-day statutory decision time-frame, the Board will backdate BFGoodrich's variance to July 29, 1988 under the circumstances in this case. BFGoodrich has shown good compliance efforts and has also shown that mechanical problems in its new wastewater treatment system were not anticipated and fashioning a remedy has delayed the process.

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

ORDER

1. The BFGoodrich Company is hereby granted variance for its Chemical Group plant in Henry, Illinois, from 35 Ill. Adm. Code 304.120(b) and 35 Ill. Adm. Code 304.141(a) (as they pertain to five-day biochemical oxygen demand (BOD) and total suspended solids (TSS)), subject to the following conditions:

a. This variance begins July 29, 1988 and terminates August 31, 1989, or when effluent compliance is achieved, whichever occurs first.

b. BFGoodrich's discharge limits through March 30, 1989, shall be as follows:

	BOD (mg/l)	TSS (mg/l)
Daily Maximum	120	70
Monthly Average	60	35

c. BFGoodrich's discharge limits from March 31, 1989, until August 31, 1989, shall be as follows:

	BOD (mg/l)	TSS (mg/l)
Daily Maximum	64	70
Monthly Average	24	35

unless BFGoodrich presents to the Agency and Board, in a new variance proceeding, the information necessary to determine variance limits consistent with the Federal Categorical Standard, based on percentages of the total discharge attributable to each of the Federal Categories.

- d. During the variance period, BFGoodrich shall operate its wastewater treatment facility so as to produce the best effluent practicable. BFGoodrich shall continue to use the rented polishing filter, the carbon filter system as much as possible to accelerate construction, and provide additional treatment to the extent possible to meet the limits established in subparagraphs b and c above.
2. Within 45 days of the granting of this variance, BFGoodrich shall execute and submit a Certificate of Acceptance agreeing to be bound to the terms and conditions of this variance and shall mail it to:

Illinois Environmental Protection Agency
 Division of Water Pollution Control
 Compliance Assurance Section
 2200 Churchill Road, P.O. Box 19276
 Springfield, Illinois 62794-9276

This variance shall be void if Petitioner fails to execute and forward the certificate within the forty-five day period. The forty-five day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We), having read the order of the Illinois Pollution Control Board, in PCB 88-117, dated April 6, 1989, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

 Petitioner

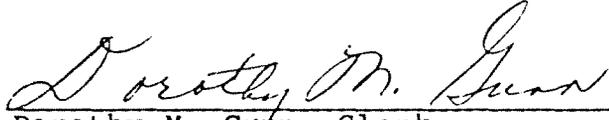
 By: Authorized Agent

 Title Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111^{1/2}, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of April, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board