ILLINOIS POLLUTION CONTROL BOARD November 7, 2002

OSMOSE WOOD PRESERVING, INC.,)	
Petitioner,)	
V.)	PCB 03-64 (Provisiona
ILLINOIS ENVIRONMENTAL	ý	× ·
PROTECTION AGENCY,)	
Respondent.))	

(Provisional Variance – Land)

ORDER OF THE BOARD (by C.A. Manning):

On November 6, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board grant a 30-day provisional variance to Osmose Wood Preserving, Inc. (Osmose). The provisional variance from 35 Ill. Adm. Code 722.134(b) would allow Osmose to store hazardous wastes on-site for longer than 90 days at its former wood treatment facility near Beardstown in Cass County.

Osmose is conducting soil remediation pursuant to a consent order in <u>People v. Osmose</u>, 96 CH 1 (Cass Co.). Osmose must treat this soil to certain levels prior to shipping it offsite for disposal. Three batches of soil Osmose tested as satisfactory were rejected by the receiving landfill, based on its own tests indicating further treatment was necessary. The provisional variance will allow Osmose to continue to store the rejected soil batches onsite without getting a Resource Conservation and Recovery Act permit, while Osmose and the landfill are working to resolve the discrepancy between their test results.

The provisional variance period would extend from November 28, 2002 to December 28, 2002, for the first batch; December 10, 2002 to January 9, 2003, for the second batch; and December 17, 2002 to January 16, 2003, for the third batch. The Agency states that failure to grant the provisional variance would impose an arbitrary or unreasonable hardship on Osmose.

Section 35(b) of the Environmental Protection Act provides:

The Board shall grant provisional variances, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. 415 ILCS 5/35(b) (2000); *see also* 35 Ill. Adm. Code 104.302.

A provisional variance lasts for no more than 45 days, but the Board can extend the time period up to an additional 45 days on the Agency's recommendation. Provisional variances granted to

one person cannot exceed a total of 90 days during any calendar year. 415 ILCS 5/36(c) (2000); 35 Ill. Adm. Code 104.308.

The Board grants Osmose a provisional variance from 35 Ill. Adm. Code 722.134(b) for the time periods specified above.

IT IS SO ORDERED.

If Osmose chooses to accept this provisional variance, it must execute a Certificate of Acceptance of all terms and conditions of this provisional variance and, within 10 days after the date of the above order, forward the executed certificate to the Agency at:

Illinois Environmental Protection Agency Attention: Scott O. Phillips, Deputy Counsel 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

Osmose accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's November 7, 2002 order in PCB 03-64.

Petitioner

Authorized Agent

Title

Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

Dorothy Mr. Gun

Dorothy M. Gunn, Clerk Illinois Pollution Control Board