

ILLINOIS POLLUTION CONTROL BOARD  
August 18, 1982

MODINE MANUFACTURING COMPANY, )  
)  
Petitioner, )  
)  
v. ) PCB 79-112  
)  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Respondent. )

CONCURRING OPINION (by J. Anderson):

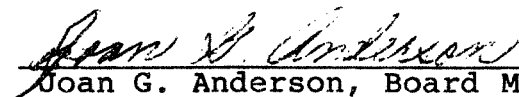
While I voted for the Board's more conservative approach of dismissing this variance petition without prejudice, I am distressed by what can only be considered an egregious abuse by the Petitioner of the Act, the Board's procedures and the underlying intent of the variance process itself.

The provisions in the Act giving access to variance relief is not intended to be used simply as a "hold card" for avoiding compliance, or as an attempt to deflect enforcement.

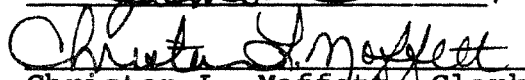
This proceeding was initiated almost three and one-half years ago. The 90-day decision limits do not exist solely for the benefit of petitioners. They provide for timely decisions on effective compliance programs so as to minimize environmental harm. In addition, by delaying pursuit of this case, the petitioner has managed to potentially get access to (though not necessarily Board approval of) the equivalent of well over an eight year variance rather than the five year limit contained in the Act.

Incidentally, any attempt to argue that lack of enforcement action "proves" lack of environmental harm during a pending variance proceeding is obviously incorrect. And I trust that the Agency will not develop a non-enforcement "mindset" regarding pending variances so as to lead others to believe such an argument has merit.

Anyone has a right to seek a variance. However, there is a point at which the right can be forfeited if procedures are grossly abused.

  
Joan G. Anderson, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 7<sup>th</sup> day of September, 1982.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board