

ILLINOIS POLLUTION CONTROL BOARD
September 3, 1981

SPARTON MANUFACTURING CO.,)
)
) Petitioner,)
)
) v.) PCB 81-87
)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

JOHN W. PESTLE, VARNUM, RIDDERING, WIERENGO & CHRISTENSON, APPEARED ON BEHALF OF PETITIONER.

CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On May 15, 1981 Sparton Manufacturing Company (Sparton) filed a motion for relief from the terms of an enforcement order entered on July 10, 1980 in PCB 79-251. The Board construed the motion as a petition for variance from a Board Order and entered it under Docket Number PCB 81-87. A citizen objection was filed on June 5, 1981 and the Board authorized a hearing to be held in this matter. A hearing was held on July 24, 1981 at which hearing the objecting citizen made a statement. The Board has received no other public comment on this matter.

Pursuant to the prior Board Order in PCB 79-251 Sparton was to have ceased the use of its water treatment lagoon by June 15, 1981. Sparton alleges it was unable to do so due to the last minute refusal of the City of Flora, Illinois to receive and treat Sparton's effluent in their treatment plant and that Sparton is, therefore, not responsible for the ten day delay in compliance. Sparton requests that the Board either find that the original Order was extended as a matter of law pursuant to a paragraph in the Order forgiving noncompliance if such noncompliance is due to federal, state or local inaction or regulation or, in the alternative, to grant Sparton a retroactive variance for the ten day period. The Illinois Environmental Protection Agency (Agency) recommends denial of the variance alleging that the hardship to Sparton was self-imposed.

The record generally indicates confusion with respect to the pretreatment requirements expected by Flora of Sparton before discharge into Flora's treatment plant. The last minute refusal

of Flora to receive Sparton's discharge appears to be due mostly to misunderstanding between the parties. The Board finds that Sparton had been depending upon its agreement with Flora in good, if somewhat misguided, faith. Nevertheless, the Board finds that a person of normal prudence would have attempted to solidify its agreement somewhat in advance of the date of final compliance in order to allow time for the development of an alternative. In this case, however, with the benefit of hindsight the Board need not determine the variance issue. The Board finds that the ten day delay in compliance is de minimis and that Sparton is in substantial compliance with the Board's Order. The Board will, therefore, dismiss the variance petition as unnecessary.

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

ORDER

It is the Order of the Pollution Control Board that Sparton Manufacturing Company's petition for variance in PCB 81-87 be and is hereby dismissed as unnecessary.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3rd day of September, 1981 by a vote of 5-2.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board