

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1999

CLAYTON CHEMICAL ACQUISITION LIMITED)	
LIABILITY COMPANY d/b/a RESOURCE RECOVERY)	
GROUP, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 00-34
)	(Variance - RCRA)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	
)	

ORDER OF THE BOARD (by M. McFawn):

On August 24, 1999, petitioner Clayton Chemical Acquisition Limited Liability Company d/b/a Resource Recovery Group, L.L.C. (RRG) filed a "Petition for Variance Regarding RCRA Permit Terms and to Deem Granted Air Permit Application." Because the petition is inadequate in many respects under the Board's procedural regulations (35 Ill. Adm. Code 104.Subpart B), the Board dismisses the petition.

The Board's procedural rules set forth very specifically the information that must be included in a variance petition. Generally, the required contents are enumerated at 35 Ill. Adm. Code 104.121:

To enable the Board to rule on the petition for variance, the following information, where applicable, shall be included in the petition:

- a) A clear and complete statement of the precise extent of the relief sought, including specific identification of the particular provisions of the regulations or Board Order from which the variance is sought;
- b) A description of the business or activity of the petitioner including the size of the business and number of employees and a description of the location and area affected by petitioner's operations;
- c) The quantity and types of materials used in the process or activity for which the variance is required and a full description of the particular process or activity in which the materials are used;
- d) The quantity and types of materials discharged from the process or activity requiring the variance; the location of the points of discharge, and, as applicable, the identification of the receiving waterway or land, or the location of the nearest air monitoring station maintained by the Agency;
- e) Data describing the nature and extent of the present failure to meet the numerical standards or particular provisions from which the variance is sought and a factual statement why compliance with the Act and regulations was not or cannot be achieved by the required compliance date;
- f) A detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program

from initiation of design to program completion and the estimated costs involved for each phase and the total cost to achieve compliance;

- g) An assessment, with supporting factual information, of the environmental impact that the variance will impose on human, plant, and animal life in the affected area, including, where applicable, data describing the existing air and water quality which the discharge may affect;
- h) Past efforts to achieve compliance including costs incurred, results achieved, [and] permit status . . . ;
- i) A discussion of the availability of alternate methods of compliance, the extent that such methods were studied, and the comparative factors leading to the selection of the control program proposed to achieve compliance;
- j) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including numerical interim discharge limitations which can be achieved during the period of the variance;
- k) A concise factual statement of the reasons the petitioner believes that compliance with the particular provisions of the regulations or Board Order would impose an arbitrary or unreasonable hardship; and
- l) Such other things as are required by this Subpart [B].

Among the "other things . . . required by this Subpart" are the RCRA-specific requirements imposed by 35 Ill. Adm. Code 104.123(e):

- e) All petitions for RCRA variances shall include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, that which would be required by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (P. L. 94-580, as amended by P. L. 95-609, 42 U.S.C. 6901 et seq.), and the regulations thereunder promulgated by the United States Environmental Protection Agency (40 CFR 260, 261, 262, 263, 264, 265 and 270 (1984)). Such petitions shall indicate whether any federal provisions authorize the relief requested and shall include any facts necessary to show that the petitioner would be entitled to the relief requested pursuant to federal law.

Additional RCRA petition requirements are imposed by 35 Ill. Adm. Code 104.126:

- a) The petitioner must clearly identify a petition for a RCRA variance as such.
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance which could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition.
- c) Petitioner shall attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request.
- d) Petitioner shall attach to the variance proof of service on USEP A as required by Section 104.142.

Inadequacy of a petition is grounds for dismissal. See 35 Ill. Adm. Code 104.125, 104.160(b)(1). In this case, RRG has provided almost none of the required information. The petition consists largely of a recitation of the history of litigation between RRG and the State, and sets forth various grievances RRG has against the State. The petition does not contain the technical information required under Section 104.121, and does not contain all the RCRA-specific information required by Sections 104.123(e) and 104.126.

RRG purported to incorporate by reference the “facts, affidavits and exhibits” filed in support of permit appeals PCB 99-28 and PCB 99-158. Pet. at 2. This provision cannot cure the defects in the variance petition. Incorporation of material from other proceedings is permitted only by leave of the Board, which must be sought through a separate written request; the party seeking incorporation must also comply with filing requirements and demonstrate the relevance of the material sought to be incorporated. 35 Ill. Adm. Code 101.106(a). RRG did not make such a request or showing in this case; thus, its incorporations by reference are ineffective.

Furthermore, dismissal is particularly appropriate in this case because even if the petition contained all the necessary information, the Board could not grant RRG’s requested relief in a proceeding of this type. RRG requests relief from the Board at three points in its petition, on pages 17-18, 20, and 27. On page 17, RRG seeks “a Variance from 35 Ill. Adm. Code 724.213 such that RRG is not required to commence permanent closure of its facility[.]” Pet. at 17. Section 724.213(a) (the relevant subsection) provides:

- a) All permits must require that, within 90 days after receiving the final volume of hazardous waste . . . at a hazardous waste management unit or facility, the owner or operator treat, remove from the unit or facility, or dispose of on-site, all hazardous waste in accordance with the approved closure plan, unless the owner or operator makes the following demonstration by way of permit application or modification application. The Agency shall approve a longer period if the owner or operator demonstrates that:
 - 1) Either
 - A) The activities required to comply with this subsection will, of necessity, take longer than 90 days to complete; or
 - B) All of the following:
 - i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes . . . ; and
 - ii) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year; and
 - iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and
 - 2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

RRG argues, based on circumstances growing out of its litigation with the State, that it should not be subject to a closure requirement.

Section 724.213(a) requires certain permits to include the requirement of closure after 90 days. RRG already has its permit, which includes the 90 day closure requirement. Pet. at 9-11, 15-16. The Board cannot grant a

variance from a permit condition. See 415 ILCS 5/35 (1998). The relief RRG seeks—suspension of the closure requirement—is specifically available under Section 724.213(a) through the permit modification process, assuming the permittee can make the required showing. Any dispute over the granting or withholding of a permit modification can be resolved by appealing the permitting decision to the Board. RRG cannot, however, obtain an order in a variance proceeding that will allow it to keep its facility open beyond the deadline contained in its permit.

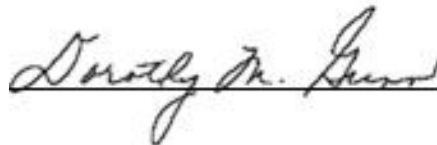
In the other requests for relief in its petition, RRG is not seeking a variance from any regulation. At page 18 of the petition, RRG asks that the Board declare that a permit modification request was timely filed, and that the permit modification should be granted. At page 20 of the petition, RRG asks that the Board declare that sufficient grounds exist for issuance of a RCRA Part B permit, and order the permit issued. Finally, at page 27 of the petition, RRG ask the Board to declare that an air operating permit issued by operation of law. A variance petition is not the proper vehicle for obtaining such relief.

The Board dismisses RRG's variance petition because the petition is insufficient under 35 Ill. Adm. Code 104.Subpart B. This docket is closed.¹

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of September 1999 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ On September 1, 1999, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss this proceeding. On September 3, 1999, the Agency filed a "Motion for Expedited Decision and for Extension of Time to File Agency Recommendation." The time for RRG to respond to the Agency's motions has not yet expired. Today's action, however, is taken on the Board's own initiative, and not in response to the Agency's motions. This action renders the Agency's motions moot.