

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1978

ARMAK COMPANY,)
)
 Petitioner,)
)
 v.) PCB 77-180
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION OF THE BOARD (by Mr. Dumelle):

On July 20, 1978, the Board granted a variance to Petitioner from Rule 404(f)(ii) of Chapter 3: Water Pollution until December 31, 1978. Petitioner was also granted a variance from Rule 962, Chapter 3, in order to obtain a construction permit to complete its program outlined in Exhibit H of its Second Amended Petition for Variance. The Agency was directed, pursuant to Rule 914 of Chapter 3, to modify Petitioner's NPDES Permit No. IL0026069 to be consistent with the conditions set forth in that Order.

The intent of the water pollution regulations is to provide that degree of protection which is necessary to restore, maintain, and enhance the waters of this State in order to protect health, welfare, property and the quality of life, and to assure that no contaminants are discharged into the waters without being given the degree of treatment or control necessary to prevent pollution. The purpose of a variance is not to permit an arbitrary and continuing violation of the law, but rather to grant a period of time during which the Petitioner can take reasonable steps to bring his operation into compliance with the law in protecting the health, welfare, property and quality of life.

Section 35 of the Act prohibits the Board from granting variances inconsistent with the Clean Water Act (CWA) Amendments; however, the standards of the CWA are less stringent than Rule 404(f). It has been shown that Petitioner is in compliance with CWA requirements, and it is the opinion of the Board that to deny Petitioner the variance it requests would prohibit Petitioner from at least furthering its efforts to comply with Board Rules and Regulations. The potential for environmental

improvement certainly outweighs any temporary adverse effects which might exist while the system is being brought up to operational standards. The Board believes that Petitioner has consistently attempted to improve its effluent levels, and is authorized to grant variances from NPDES permit provisions only when the relief is in compliance with applicable provisions of the CWA as amended.

Petitioner proposes to expand its wastewater treatment facilities. This expansion will include a new 64-acre spray irrigation field. The existing 16-acre spray field will be utilized primarily in the winter. Winter storage on the field will accumulate to approximately 1.5 feet of water. A new recycle pump will apply this accumulated water to the new spray field in the spring, and the 16-acre field will serve as a back-up field for the remainder of the year. A new 64-acre center-pivot spray irrigation system will be constructed to the west of the plant which will result in conservative hydraulic and organic loadings, and no underdrains will be installed. The underdrain flow rate periodically exceeds 100,000 gallons per day. Petitioner claims that this expansion will result in compliance with Board Rules and Regulations by December 31, 1978.

The Agency alleges that Petitioner has not conclusively proven that the proposed system will have a substantial likelihood of achieving compliance with applicable effluent limits and water quality standards. As a result of considerable negotiations with the Agency on this matter, Petitioner has agreed to monitor dissolved oxygen upstream and downstream of its discharge on each day of discharge and each day after a discharge with each sample to indicate date and time of sampling. Petitioner's discharge shall not cause dissolved oxygen in Aux Sable Creek to fall below 5.0 mg/l unless the upstream dissolved oxygen is less than 5.0 mg/l in which case Petitioner's discharge shall not deplete the downstream level by more than .5 mg/l. The Agency recommends that if during the term of this variance Petitioner discovers that its compliance program will not be successful, Petitioner shall submit a modified permit application to the Agency indicating an alternative compliance program. Under these conditions, the Agency believes a variance is warranted. The Board agreed and so ordered.

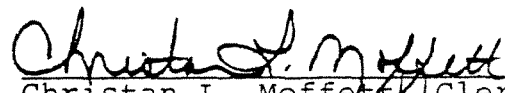
In addition, the Board ordered that the BOD and TSS discharged shall be limited to the amounts set forth in Exhibit L which is attached to Petitioner's Second Amended Petition for Variance. In that document, the daily maximum for BOD should be no greater than 126 lbs/day and 22 lbs/day for TSS between March and April. For the period May through February, the daily maximum for BOD should not exceed 63 lbs/day and 11 lbs/day for TSS. Petitioner

has shown that these levels are achievable and it should be noted that these standards are more stringent than the Federal standards for BOD and TSS.

Petitioner alleges that denial of a variance would result in the closing of Armak's facilities and layoff of approximately 85 employees. The Board has made clear in other cases that a variance denial is not a shut down order. Therefore, Petitioner's reasons for unreasonable or arbitrary hardship are insufficient. Despite this insufficiency, and the fact that Petitioner has not clarified the urgent necessity for a variance until December 31, 1978, the Board feels that the variance should be granted because such a short period of time is involved, and since it was shown that the grant of this variance would not cause injury or environmental harm to the public or the Aux Sable Creek. It would be unreasonable to require Petitioner to discharge effluent which conforms to Board standards while construction is going on since no threat to public health is present and since no feasible alternative method now exists.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 3RD day of August, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board