ILLINOIS POLLUTION CONTROL BOARD
September 15, 1977

| | | |
|---|---|---|
| ENVIRONMENTAL PROTECTION AGENCY, Complainant, | ) | |
| v. | ) | PCB 77-200 |
| CITY OF BREESE, Respondent. | ) | |

ORDER OF THE BOARD (by Mr. Goodman):

On August 19, 1977, the City of Breese submitted a motion requesting the Board to clarify its Order of August 4, 1977, dismissing the City's variance petition. The petition was dismissed because it requested a variance to operate the City's Boiler No. 2 on coal fuel during a potential emergency situation. The Board has consistently held that it does not grant variances for use in emergency situations as the variance procedure was not intended to excuse mere potential violations of the regulations. City of Mascoutah v. EPA, PCB 75-295 (1975); State of Illinois, Department of Mental Health, Manteno State Hospital v. EPA, PCB 74-352 (1974).

As clarification, the Board points out that a variance is merely a shield from prosecution. In denying a variance request, the Board does not and cannot prohibit the Petitioner from engaging in the subject activity, i.e. operation of the boiler on coal fuel during a potential power shortage. The Board merely denies Petitioner a shield from prosecution for operating in violation of the Regulations. However, should any such prosecution arise, the fact that the City violated the Regulations solely in response to an emergency situation would, of course, be a factor in the City's favor that the Board would consider.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15th day of September, 1977 by a vote of 4-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board

27-350
~~26-567~~
27-467