

The EPA recommended that the six-month variance be granted. The EPA stated in its Recommendation of February 15, 1974:

"5. The Agency notes that though delay in filing a permit application until May of 1973 appears unusually long, Petitioner apparently believed at the time of this submittal that timely compliance was possible."

"6. The Agency believes that Petitioner reasonably anticipated that timely compliance could be met if contracts were awarded by September 1, 1973."

"7. The Agency believes that the facts as presented by Petitioner, indicate that the delays encountered were substantially beyond its control and that the Petitioner took reasonable measures to avoid delay. Thus the Agency believes that to require timely compliance would impose an arbitrary or unreasonable hardship."

The determination of whether a hardship has been self-imposed turns on the facts and circumstances of each case. The test of unreasonable hardship is not satisfied when a petitioner negligently but in good faith fails to comply with the Act, rules, or regulations. A hardship is self-imposed if a reasonable, prudent man in the same or similar circumstances would not have acted the same way. Measured against this test, we believe Petitioner's variance should be granted. While looking with a jaundiced eye on Petitioner's delay in applying for its permit, Petitioner's diligence in undertaking studies in April, 1972, convinces us that more probably than not IP's actions were reasonable and that the hardship is not self-imposed.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Petitioner be given a variance from Rule 408 (suspended and total dissolved solids) of Chapter Three: Water Pollution Regulations, from January 1 through June 30, 1974.

2. Petitioner submit monthly reports to the EPA setting out its progress toward compliance with Rule 408. These reports should be sent to:

Illinois Environmental Protection Agency
Division of Water Pollution Control
2200 Churchill Road
Springfield, Illinois 62706

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 7th day of March, 1974, by a vote of 5 to 0.


Christan L. Moffett, Clerk