

ILLINOIS POLLUTION CONTROL BOARD
May 4, 1982

SCA CHEMICAL SERVICES, INC.,)
)
) Petitioner,)
)
) v.) PCB 82-60
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by I. Goodman):

On April 13, 1982, SCA Chemical Services, Inc. (SCA) filed a request for provisional variance with the Illinois Environmental Protection Agency (Agency). On May 3, 1982 the Agency, pursuant to Sections 35(b) and 37(b) of the Environmental Protection Act (Act), filed its Recommendation for provisional variance before the Board. Pursuant to Section 35(b) of the Act the Board must take action within two days of receipt of this notification from the Agency.

This provisional variance is identical to a petition for variance filed by SCA Chemical Services, Inc. (SCA) before the Board on April 8, 1982 in PCB 82-39 pursuant to Section 35(a) of the Act.

A careful reading of Sections 35, 36, and 37 of the Act will show the distinction between a provisional variance and a regular variance. The regular variance of Section 35(a) was designed to give long-term relief for a party under an arbitrary or unreasonable hardship caused by limitations prescribed pursuant to the Act. Since such a variance can extend for as long as five years the procedures developed to consider its merits are necessarily carefully and precisely drawn. The Agency must file its recommendation after careful study of the proposed variance, the public is notified, and there is opportunity for a public hearing and careful Board review. This procedure frequently interfaces with federal rules and regulations and is designed to meet federal procedural requirements as well.

The provisional variance on the other hand allows for short-term relief of 45 days, extendable one time only for an additional 45 days, for a maximum duration of only ninety days. Its purpose is to provide immediate and short-term relief so an uncomplicated and relatively simple situation can be corrected within that time by allowing brief excursions from environmental limitations.

Because of the very limited duration of the provisional variance the procedures developed to obtain it are simple and designed to expedite its consideration.

It is clearly inconsistent for a petitioner to request both a provisional variance and a regular variance at the same time. On the one hand he is proposing to correct the situation within 45 days while at the same time stating that he requires much longer than that to solve the problem.

The provisional variance was never intended to protect the petitioner while his regular variance was being processed. Apart from the obvious absurdity of the situation, certain legal difficulties arise. If the Agency were to recommend a provisional variance and then discover upon further investigation in the regular variance that it should not be granted, what is the status of the petitioner who has changed his position in reliance upon the provisional variance and then finds himself prejudiced by a different recommendation in the regular variance? If the Board allows issuance of the provisional variance, how can the Board later be heard to deny a variance based upon the very same set of facts?

It is clear that the two variance procedures are designed to consider two totally inconsistent situations and therefore may not be brought before this Board at the same time. As the Board accepted the petition for the regular variance on April 15, 1982, the Board therefore denies the provisional variance recommended by the Agency in PCB 82-60.

The Board is always ready, willing and able to respond to reasonable and legitimate requests for expedited consideration in a regular variance petition. Assuming no objections are received by the Board which would trigger a public hearing, the Board can, and shall if so requested, proceed with the petition in PCB 82-39 as soon as it receives the Agency's recommendation in that case.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of May, 1982 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board