

ILLINOIS POLLUTION CONTROL BOARD

July 11, 2002

AKZO NOBEL SURFACE CHEMISTRY )  
LLC, )  
 )  
Petitioner, )  
 )  
v. ) PCB 03-3  
 ) (Variance - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.A. Manning):

Akzo Nobel Surface Chemistry LLC (Akzo Nobel) seeks a variance from certain effluent standards in the Board’s water pollution regulations. The Environmental Protection Act authorizes the Board to grant temporary relief from its regulations in the form of a variance. *See* 415 ILCS 5/35(a) (2000). The person requesting the variance must prove that compliance with the Board’s regulations “would impose an arbitrary and unreasonable hardship.” *Id.* Below, the Board briefly describes Akzo Nobel’s operations and variance request. The Board then identifies informational deficiencies in Akzo Nobel’s petition that preclude accepting it for hearing at this time. Finally, the Board gives Akzo Nobel time to file an amended petition to correct the deficiencies.

**AKZO NOBEL’S OPERATIONS AND VARIANCE REQUEST**

Akzo Nobel has a plant on Tabler Road outside of Morris in Grundy County. Akzo Nobel explains in its July 8, 2002 petition for variance<sup>1</sup> that its plant produces fatty acid and nitrogen derivatives that are used primarily as surfactants in agricultural, detergent, and personal care products and in numerous industries. Pet. at 1. According to the petition, the plant has a wastewater treatment system culminating in a 65-acre spray irrigation field designed to biologically treat the water. Excess treated water from the field is collected through an underdrain system and discharged through Outfall 001 under Akzo Nobel’s National Pollutant Discharge Elimination System (NPDES) permit. *Id.* at 2, 4. Outfall 001 discharges to Aux Sable Creek, a tributary of the Illinois River. *Id.*

Akzo Nobel seeks a variance from the Board’s effluent standards for (1) biochemical oxygen demand (BOD<sub>5</sub>) and total suspended solids (TSS) at 35 Ill. Adm. Code 304.120 and (2) total ammonia nitrogen at 35 Ill. Adm. Code 304.122. Pet. at 1. In its petition, Akzo Nobel

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<sup>1</sup> Akzo Nobel’s petition is cited as “Pet. at \_.”

explains that its wastewater effluent from Outfall 001 has, in recent years, periodically exceeded these standards for several reasons, including increased wastewater volume and prolonged cold weather that impair how well the 65-acre field works. *Id.* at 3-7.

Akzo Nobel states that it plans to address the problem by making wastewater treatment improvements at the plant. *Pet.* at 8-12. The petition contains proposed variance conditions regarding Akzo Nobel's schedule for these improvements, including having constructed additional wastewater storage by February 2003 and improvements to equalize wastewater flow by December 2003. *Id.* at 12-13. Akzo Nobel asks the Board to hold a hearing and requests that the variance "be effective immediately" and last until December 31, 2004. *Id.* at 13. The Board understands Akzo Nobel's request for immediate effectiveness to mean not that Akzo Nobel seeks a retroactive variance, but rather that any variance granted would take effect when the Board issues its final order. *See* 35 Ill. Adm. 104.204(k).

### **DEFICIENCIES IN AKZO NOBEL'S PETITION**

The Board's procedural rules specify what variance petitions must contain. *See* 35 Ill. Adm. Code 104.204. The Board cannot accept Akzo Nobel's petition for hearing because it is deficient in the following respects. First, the petition fails to provide "[f]acts that set forth the reasons the petitioner believes that immediate compliance with the regulation . . . of the Board would impose an arbitrary or unreasonable hardship." 35 Ill. Adm. Code 104.204(e). The petition provides only the conclusory statement that Akzo Nobel "cannot maintain consistent compliance" until it implements its proposed improvements. *Pet.* at 8. Second, the petition addresses neither efforts that would be necessary to comply immediately with the Board's effluent standards, nor all possible compliance alternatives, including corresponding costs and why Akzo Nobel chose its proposed improvements over the alternatives. *See* 35 Ill. Adm. Code 104.204(d). Third, the petition includes no estimated costs to implement Akzo Nobel's proposed improvements. *See* 35 Ill. Adm. Code 104.204(f)(3).

Fourth, the petition does not describe the amount of discharges of BOD<sub>5</sub>, TSS, and total ammonia nitrogen currently generated, or provide data on the nature and extent of the present or anticipated failure to meet the Board's effluent standards. *See* 35 Ill. Adm. Code 104.204(b)(8), (c). Fifth, Akzo Nobel's petition fails to describe the nature and amount of discharges of the constituents, or the quantitative impact on human health and the environment, if the Board grants the requested variance compared to that which would result if Akzo Nobel had to comply immediately. *See* 35 Ill. Adm. Code 104.204(g)(1), (2). Finally, the petition does not identify any "numerical interim discharge limitations that can be achieved during the period of the variance." 35 Ill. Adm. Code 104.204(g)(3).

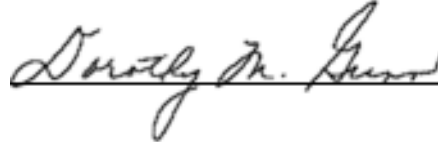
### **AMENDED PETITION**

The Board orders Akzo Nobel to file an amended petition that addresses the deficiencies described above. *See* 35 Ill. Adm. Code 104.228; *see also* 35 Ill. Adm. Code 104.232(a)(2) (calculating decision deadline when amended petition is filed). The Board will

dismiss this case if Akzo Nobel fails to file an amended petition by August 10, 2002, which is the 30th day after the date of this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 11, 2002, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board