

ILLINOIS POLLUTION CONTROL BOARD
April 7, 1988

NEW JERSEY ZINC COMPANY,)
)
 Petitioner,)
)
 v.) PCB 86-187
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ELIZABETH E. TULMAN, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF PETITIONER; AND

THOMAS DAVIS, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on an October 24, 1986 Petition for Variance filed by the New Jersey Zinc Company (hereinafter "NJZ"). On November 20, 1986, the Board found the petition deficient, inter alia, in that it contained an insufficient compliance plan. On March 6, 1987, NJZ filed an Amended Petition for Variance. On April 20, 1987, the Illinois Environmental Protection Agency ("Agency") filed a Recommendation that variance be granted. Hearing was held July 16, 1987. No briefs were filed. On March 21, 1988, NJZ filed a Motion to Revise Compliance Schedule. On March 29, 1988, the Agency filed a response that agreed with the requested revision. The Board hereby grants the requested revision.

Factual Background

The NJZ plant, located at De Pue, Illinois, is engaged in the manufacture of zinc dust for the coatings industry. In a predominantly agricultural area, it employs approximately 26 workers and staff, with an annual payroll of approximately \$700,000. In previous years, NJZ's processing and manufacturing activities generated residues from zinc smelting, and lithopone waste from pigment production. These waste materials, which are not produced by current operations, were placed on a field at the plant site. The zinc smelting residues were deposited in one pile at the southern end of the property, known as the "cinder bank." North of this pile, lithopone residues were collected in five ridges. At one time, an open ditch surrounded the cinder bank. Runoff from the cinder bank and lithopone piles drained into the ditch, which then flowed in a generally southerly

direction into a storm drain for Marquette Street. The groundwater table for this area is high, and in times of heavy rainfall, groundwater would seep into the ditch, and combine with land runoff. The Marquette Street drain carried the runoff to Lake DePue, a shallow oxbow lake created by the changing course of the Illinois River. Lake DePue is in equilibrium with the Illinois River, rising and falling as the river level varies.

In March of 1978, the State of Illinois commenced a civil action against NJZ in Bureau County, Illinois Circuit Court. (People of the State of Illinois v. Gulf & Western Industries and the New Jersey Zinc Co., Case No. 78-CH-4.) The Agency asserted that water conveyed by the open ditch contained levels of metals in excess of the contaminant levels in 35 Ill. Adm. Code 304.124 (or Rule 408, as it was then identified). The Agency sought injunctive relief that would require NJZ to take action to reduce the metals contained in the ditch water. The action was resolved by entry of a Consent Order and Agreement on October 30, 1981. This Order directed NJZ to make certain physical changes to reduce the amount of metals picked up by stormwater runoff and to convey that stormwater runoff in a manner so as to isolate it from groundwater seepage. The remedial measures required under the Court Order were completed by August 1985, to the Agency's satisfaction. The Agency subsequently approved the construction and released \$200,000 of a \$225,000 performance bond. The remaining \$25,000 was to be released at the expiration of the Consent Order on October 30, 1986.

Pursuant to the terms of the Consent Order, and subsequent federal regulations found at 40 CFR Section 122.26, NJZ is required to secure an NPDES permit. The present NPDES permit places effluent limits on the discharge of certain parameters. NJZ's variance petition requests relief from six of those parameters:

Parameter	All Concentrations in mg/l			
	Current Limits ¹		Requested Limits	
	30-Day Average & Daily Max.		30-Day Average & Daily Max	
cadmium	.15	0.3	0.5	1.0
copper	0.5	1.0	2.0	4.0
iron	2.0	4.0	3.0	6.0
manganese	1.0	2.0	5.0	10.0
TSS	15	30	75	150
zinc	1.0	2.0	25	50

NJZ requests that it be allowed to subtract the upstream concentration of any parameter in determining its effluent values.

¹ These values are directly from 35 Ill. Adm. Code 304.124(a), and the Averaging rule at 35 Ill. Adm. Code 304.104(a).

A small volume of flow is involved, typically 50 gallons per minute or less. After this flow enters the Marquette Street drain, it is augmented by other sources, including water from the nearby Mobil Oil lagoon. Mobil Oil did not estimate the flow from their lagoon, but based on visual observations, NJZ believes the flow to be somewhere in the vicinity of 10,000 gallons per minute. After combining with Mobil discharge, the Marquette Street drain flows into Lake DePue. Lake DePue is a shallow oxbow lake (perhaps two to three feet in depth) adjacent to the Illinois River.

Discussion

The Board may grant variance relief where the record shows that immediate compliance with the regulatory standard would impose an arbitrary and unreasonable hardship on the petitioner and the record shows that such hardship would outweigh the risk of environmental harm. The Agency and NJZ are in agreement that these conditions have been met.

NJZ believes immediate compliance would impose an arbitrary and unreasonable hardship. NJZ asserts that:

1. It cannot improve the land runoff collection system;
2. The present collection system was installed as the Agency directed and is being maintained in the best manner possible;
3. Installation of a treatment plant to further control contaminants would cost over \$750,000, with annual operating expenses of over \$200,000; and
4. Revenues from the DePue facility are insufficient to cover these costs (Am. Pet, par. 36).

The Agency agrees (Rec. par. 7).

Both the Agency and NJZ believe that the risk of environmental harm is minimal at present levels of discharge (Am. Pet., pars. 36-37; Rec., par. 5). The Board finds that immediate compliance would impose an arbitrary and unreasonable hardship and that such hardship outweighs the risk of environmental harm.

Compliance Plan

The variance procedure is not available for permanent relief from pollution control requirements. Variance relief may be granted for a maximum period of five years and the petition must describe how the petitioner will achieve compliance. Board regulations, at 35 Ill. Adm. Code 104.121(f) particularly describe the scope of an adequate compliance plan:

Section 104.121 Contents of Variance Petition

To enable the Board to rule on the petition for variance, the following information, where applicable, shall be included in the petition:

* * *

- f. A detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program from initiation of design to program completion and the estimated costs involved for each phase and the total cost to achieve compliance.

The question before the Board is whether NJZ has such a compliance plan. NJZ's plan for full compliance with the Act and regulations is, in toto:

- g. By November 30, 1988, NJZ will submit a schedule for further action to be taken to achieve compliance with Illinois rules. Further action may include a schedule for additional sampling and studies, a date for filing a "Petition to Amend Regulations" seeking site-specific rules, and/or a construction schedule for improvements. (Motion to Revise, p. 3)

This provision simply does not constitute a compliance plan. It provides no guidance to the Board on how, when or if NJZ will ultimately comply with applicable regulations. Consequently, the Board must find that NJZ does not have a plan for ultimate compliance with the Act and Board regulations.

Under normal circumstances, the Board would simply deny the variance for lack of a compliance plan; however, this case does not present normal circumstances. The violation of Board regulations does not result from some presently ongoing activity

by NJZ which could simply be discontinued if variance were denied. The violation results from the interaction of rainfall (and some amount of groundwater seepage) with a piece of NJZ's property. Even if NJZ ceased all operations immediately, rainfall would still occur and the runoff would still, presumably, violate Board effluent regulations.

Because of these unique circumstances, the Board believes that NJZ should be granted a short-term variance for the purpose of developing a plan for ultimate compliance with the Act and regulations. Consequently, the Board will grant NJZ a variance until November 30, 1988, with the conditions agreed upon by the parties.

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

ORDER

New Jersey Zinc Company is hereby granted a variance from 35 Ill. Adm. Code 304.124(a), as it pertains to cadmium, copper, iron, manganese, zinc, and total suspended solids, subject to the following conditions:

1. This variance will expire November 30, 1988;
2. Not later than November 30, 1988, New Jersey Zinc shall prepare and submit to the Agency a plan for ultimate compliance with the Act and Board regulations;
3. During the term of this variance, the following interim limits shall apply to New Jersey Zinc's discharge:

<u>Parameter</u>	<u>30-Day Av.</u>	<u>Daily Max.</u>
cadmium	0.5	1.0
copper	2.0	4.0
iron	3.0	6.0
manganese	5.0	10.0
TSS	75	150
zinc	25	50

4. Sampling and analysis of effluent parameters shall be in accordance with New Jersey Zinc's NPDES permit. However, in determining whether compliance has occurred, New Jersey Zinc may subtract the concentration of any background level of contaminant determined by sampling at

Point II of their NPDES permit. All sampling and analysis data shall be reported to the Illinois Environmental Protection Agency;

- 5. New Jersey Zinc shall submit quarterly reports to the Illinois Environmental Protection Agency, within 15 days of each calendar quarter;
- 6. Within 45 days after the date of this Opinion and Order, New Jersey Zinc shall execute and send to:

Illinois Environmental Protection Agency
 Attention: Thomas Davis
 Enforcement Programs
 2200 Churchill Road
 Springfield, IL 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if New Jersey Zinc fails to execute and forward the certificate within the 45-day period. The 45-day period shall be in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We) _____, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 86-187, dated April 7, 1988, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

 Petitioner

 Authorized Agent

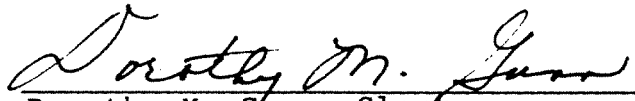
 Title

 Date

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. ch. 111-12, par. 1041, 1985, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 7th day of April, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board