

The Agency in its Recommendation states that there is no evidence indicating that Du Pont is acting in bad faith, and that the further delays appear to be beyond Du Pont's control.

The Board in its prior decisions noted that Du Pont is expending in excess of \$500,000 to achieve compliance at its Seneca Works. The Board also notes that the failure to grant this short extension would result in considerable financial loss to Du Pont, and that a shut-down of the subject nitric acid plants would result in the loss of between 4 and 12 jobs among Du Pont's employees. The Board further finds in this matter that the extension here granted will result in little environmental damage. (While the data submitted by Du Pont in PCB 74-142 remains open to question, it still remains probable-as was there noted-that this extension will not result in any violation of primary or secondary ambient air quality standards relating to nitrogen oxides.)

The same factors which led the Board to agree with the Agency's Recommendations in granting the prior Variances lead the Board to again find that a denial of this extension would constitute an arbitrary and unreasonable hardship.

The Board, in reaching an expedited decision in this matter, does so as a result of a further showing of good faith on the part of Du Pont. As noted in the Variance Petition in the instant case, Du Pont intends to shut-down the subject facilities at the conclusion of its present variance on April 1, 1975. Du Pont again noted its intent to remain in strict compliance with Rule 207(d)(2) by shutting down the offending facilities in an oral communication to the Board on March 31, 1975. Du Pont in that communication also made an oral Motion for early consideration of this matter. Although that Motion clearly fails to comply with the Board's Procedural Rule as regards Motions, the Board may in its discretion accept and act on such a Motion, and does so here.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Petitioner E.I. Du Pont De Nemours & Co. be granted a Variance from Rule 207(d) (2) of Chapter 2: Air Pollution, of the Board's Rules and Regulations, for Petitioner's #1 and #2 weak nitric acid plants at its Seneca facility, from March 30, 1975 until May 31, 1975, or the date on which the Union Carbide Pura-Siv "N" molecular sieve controls for those plants are installed and operating, whichever is sooner, subject to the following conditions:

1. Petitioner shall continue to submit to the Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, bi-monthly progress reports detailing:

- a. Progress made on the installation of the molecular sieve controls for plant #1 and #2;
 - b. The amounts of acid produced by Petitioner's plants #1, #2, and #3 at the Seneca facility;
 - c. The amounts of acid needed to meet Petitioner's internal and external demands.
2. Plants #1 and #2 shall be operated only when plant #3 cannot meet demands, whether internal or external.
3. Petitioner shall apply for and obtain all applicable permits relating to construction of the Pura-Siv "N" molecular sieve control systems for #1 and #2 weak nitric acid plants.
4. The bond posted in compliance with the Board's Order in PCB 73-325, and extended under the Board's Order in PCB 74-142, shall, within 35 days of the entry of this Order, be renewed and appropriately redated to cover the period of this variance extension.
5. Within 35 days of the date of this Order Petitioner shall execute and forward to the Environmental Protection Agency, Control Program Coordinator, at the address noted above, a certification of acceptance of the Variance hereby granted. The form of such certification shall be as follows:

CERTIFICATION

I (We) _____,
having read and fully understood the Order
of the Illinois Pollution Control Board in
PCB 75-60, hereby accept said Order and the
Variance granted thereby, understanding that
such acceptance is irrevocable and renders
binding all terms and conditions thereof.

Signed _____
Title _____
Date _____

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order were adopted on the 4th day of April, 1975 by a vote of 3 to 0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board