## ILLINOIS POLLUTION CONTROL BOARD April 4, 1975

| E.I. DU PONT DE NEMOURS & CO.,   | ) |           |
|----------------------------------|---|-----------|
| INC.,                            | ) |           |
| Petitioner,                      | ) |           |
|                                  | ) |           |
| v <b>.</b>                       | ) |           |
|                                  | ) | PCB 75-60 |
| ENVIRONMENTAL PROTECTION AGENCY, | ) |           |
|                                  | ) |           |
| Respondent.                      | ) |           |

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin)

This case comes before the Pollution Control Board (Board) on a Petition of E.I. DuPont De Nemours & Co.(Du Pont), to extend a previously granted Variance from Rule 207(d)(2) of the Board's Air Pollution Regulations (relating to nitrogen oxides) for Petitioner's two weak nitric acid plants located at its Seneca Works, in LaSalle County, Ill. The Petition, filed February 11, 1975, asks that the Board extend the prior variance from March 30, 1975 to May 31, 1975. As the basis of its Petition Du Pont alleges that it has been unable to meet compliance dates established under prior Variances due to failures in equipment delivery by the suppliers of its air pollution control equipment. Pollution Regulations.

This matter originally came before the Board in a similarly entitled case, PCB 73-325. In its decision in that matter, the Board, on October 18, 1973 granted Du Pont a Variance until July 15, 1974, from the provisions of Rule 207(d)(2). During that period, Du Pont was to have installed Union Carbide Pura-Siv "N" molecular sieves to control its emission of NO $_2$  into the atmosphere. (The conditions of that Order were modified in a further Order dated December 13, 1973. PCB 73-325, 10 PCB 331 (1973).)

The Variance was then extended to March 31, 1975 by the Board on October 10, 1974 in PCB 74-142. 14 PCB 117. The Board in that case found that Du Pont's delays in compliance were due to delivery delays similar to those alleged in the instant case, and that such delays arose without any fault on the part of Du Pont. The Board was of the Opinion that a failure to grant such an extension in the face of Du Pont's continuing good faith would constitute an arbitrary and unreasonable hardship.

The prior Variance cases in this matter adequately describe Du Pont's Seneca Works, and the processes giving rise to the  $NO_2$  emissions for which this Variance extension is sought. In both prior cases the Illinois Environmental Protection Agency (Agency) recommended that the requested Variances be granted, as is again the case in this matter.

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

|                                                                                                                                                                        | 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 day of day of 1975 by a vote of 3 |                                                                                                                                                                                                                                                                     |  |
| to <u>c</u>                                                                                                                                                            | Christan L. Moffett, Clerk                                                                                                                                                                                                                                          |  |
| I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order were adopted on the day of, 1975 by a vote of _3 to   |                                                                                                                                                                                                                                                                     |  |