

ILLINOIS POLLUTION CONTROL BOARD  
May 9, 1997

ROBBINS RESOURCE RECOVERY	)	
PARTNERS, L.P., owner, and FOSTER	)	
WHEELER ILLINOIS, INC., operator.,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 97-197
	)	(Provisional Variance - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), Robbins Resource Recovery Partners, L.P., owner, and Foster Wheeler Illinois, Inc. operator (petitioners) have requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)(1994)). Such request for provisional variance and notification of recommendation were filed with the Board by the Agency on Thursday, May 8, 1997. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

Pursuant to a construction permit (No. 1990-068-DE) which by its terms expired May 7, 1997, petitioners have developed a waste-to-management energy-facility (facility) for the management of municipal solid waste (MSW). Petitioners have applied to the Agency for both extension of the now-expired construction permit, as well as for an operating permit. The Agency decision on these permits is not required to be made until June 2, 1997. At the facility, MSW is received on the tipping floor, then sorted, sized, and shredded, and a portion is turned into refuse-derived fuel (RDF) after extraction of recyclable materials.

Pursuant to Section 35(b) of Act (415 ILCS 5/35(b)), the Agency, by and through its Associate Director, Renee Cipriano, seeks a provisional variance to allow petitioners to continue to operate their solid waste management facility pending Agency decision on their various pending permit applications. The provisional variance would allow the receipt, manual processing, storage and repacking of waste for transport to disposal sites, but not its incineration.

Specifically, the Agency recommends that we grant petitioners a 24-day provisional variance for their Cook County facility from certain requirements limiting the acceptance of

municipal waste, as imposed by Special Conditions #1 and #3(a), (b), and (c) of its Development Permit No.1990-068-DE. This variance period is recommended to commence “from the date of the Pollution Control Board’s order in this matter to June 2, 1997.” (Agency Recommendation at 1.)

The Agency recommends that the Board grant the requested provisional variance with specified conditions. In its recommendation, the Agency noted the following:

The Illinois EPA has concluded, based upon representations of the Petitioners, that discontinuing municipal waste (“MW”) acceptance at the Site will have impacts upon the Village of Robbins, temporary and permanent employees of the Facility, and twelve (12) municipalities which have contracted with the Facility for recycling and disposal of their MW. Discontinuing MW acceptance at the Site will cause a loss of needed revenues to the Village of Robbins, and loss of wages to the temporary and permanent employees at the Site. Additionally, the municipalities of Calumet City, Dixmoor, Park Forest, Robbins, Country Club Hills, Ford Heights, Phoenix, Steger, Crete, Markham, Richton Park, and Thorton, the twelve communities that have entered into contracts with Robbins Resource Recovery Partners, L.P., may experience increased disposal costs due to the discontinuance of MW acceptance at the Site.

(Agency Recommendation at 1.)

The Agency maintains that a grant of a provisional variance would violate no federal laws. The Agency believes that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioners.

#### PETITIONER’S EMERGENCY REQUEST FOR EXPEDITED RULING

Prior to the Board’s receipt of the Agency’s recommendation in this matter, petitioners filed an emergency request for expedited ruling. Petitioners maintain that “any delay in granting the request for provisional variance will cause an arbitrary and unreasonable hardship.” (Petitioners’ Emergency Request at 2.) Further, petitioners note the following:

RRRP and Foster Wheeler will suffer significant financial hardship because they will be unable to operate their facility until after the Board acts on the Agency’s recommendation. In addition, as is explained in the attached Verified Petition, the Village of Robbins, where the facility is located, receives significant financial benefits from the operation of the facility. Thus, the Village of Robbins will also be harmed by any delay in the Board’s ruling on the Agency’s recommendation. Finally, as is also set forth in the attached petition, a number of the facility’s employees are residents of the Village of Robbins and they will be without pay during any shutdown.

(Petitioners’ Emergency Request at 2.)

The Agency, in its recommendation, does not challenge petitioners' assertion that this is an emergency situation.

### ANALYSIS

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. (See 415 ILCS 5/35(b) & 36(c)). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibilities are to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

The Board acts on this provisional variance today primarily to avoid any public health concerns which could flow from disruption of waste disposal services to the 12 affected communities. Since, as explained in more detail below, the Board's discretion to act under Section 35(a) is severely circumscribed, we believe it appropriate to act on this matter pursuant to the emergency notice and meeting provisions of Section 5 of the Act (415 ILCS 5/5) and Section 2.02 of the Open Meetings Act (5 ILCS 120/2.02). Notice of this meeting was given to the Board's Members and posted on May 8, 1997.

Having received the Agency recommendation that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioners a provisional variance pursuant to Section 35 of the Act from Special Conditions #1 and #3(a), (b), and (c) of its Development Permit No.1990-068-DE, on the following conditions:

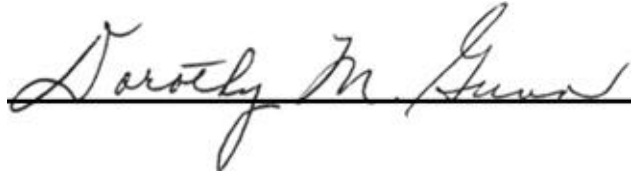
1. The term of this provisional variance shall commence on May 9, 1997 and shall expire on June 2, 1997;
2. Petitioners shall not combust municipal waste (MW) or refuse derived fuel (RDF) at the site during the period of this provisional variance;
3. The petitioners shall not operate any emission source or air pollution control equipment at the facility during the period of the provisional variance;
4. The petitioners shall not store RDF at the facility during the period of the provisional variance;
5. The petitioners shall only receive, manually process, store and repack MW from the twelve municipalities referenced herein. Further the MW shall be limited to the MW authorized under the air construction permit and the Development Permit and contemplated by the petitioners's application for air and land Operating Permits pending with the Agency;

6. Petitioners shall at least once every 24 hours of operation, remove all MW from the tipping floor. The tipping floor shall be swept to remove all waste. No waste shall remain at the facility when the facility is not scheduled to be open the following day;
7. Petitioners shall maintain a contingency plan that provides for the proper management of leaky containers. This plan must include, but not be limited to, shipping and handling damaged containers first. Containers which are not open to the atmosphere and therefore minimize leachate generation must be utilized.
8. Petitioners shall ensure that access doors in the MW receiving, RDF processing, and RDF storage areas are closed except as needed for safe passage of vehicles, personal and material;
9. Petitioners shall conduct walk-through inspections at least once daily to ensure compliance with the fugitive particulate matter emissions requirement, the closed door requirements and any other applicable statutory or regulatory requirement. Such inspections shall be recorded in a log, with the dates and times of the inspections and the names of the employees performing the inspections;
10. Petitioners shall take all necessary measures to ensure that the receipt of MW, manual sorting of MW for recycling, and repacking of MW for transport to a facility properly permitted to receive the MW does not threaten or allow air pollution or violation of any Board regulations;
11. Petitioners shall take all necessary measures to ensure that the receipt of MW, manual sorting of MW for recycling, and repacking of MW for transport to a facility properly permitted to receive the MW does not emit beyond the facility any noise that creates a public nuisance or violation of any Board regulations;
12. Petitioners shall, to the extent necessary and appropriate, conduct activities authorized by this provisional variance in accordance with its fugitive particulate matter emissions operating program, which has been submitted to, and reviewed by, the Agency's Bureau of Air;
13. Petitioners shall, during the term of this provisional variance, comply with the terms of the unaffected portions of the Development Permit, and any other statutory or regulatory requirements not expressly addressed in the recommendation, as necessary and appropriate.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of May, 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board