

ILLINOIS POLLUTION CONTROL BOARD

May 1, 1997

BERLIN INDUSTRIES,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 97-184
	)	(Provisional Variance - Air)
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)), Berlin Industries (petitioner) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to the petitioner.

The Agency, by and through its Director, Mary A. Gade, seeks a provisional variance pursuant to Section 35(b) of Act (415 ILCS 5/35(b)) to allow petitioner to continue to operate its facility while the main drive shaft in its afterburner is replaced. Such request for a provisional variance and the notification of recommendation were filed with the Board by the Agency on Thursday, April 24, 1997. Under Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing. The Board issues this order today *nunc pro tunc*.

Specifically, the Agency recommends that we grant petitioner a 4-day provisional variance for its DuPage County facility from 35 Ill. 218.407(a)(1)(E). This variance period shall commence on April 27, 1997 at 4:00 pm and expire on May 1, 1997 at 4:00 pm.

The Agency recommends that the Board grant the requested provisional variance with specified conditions and agrees that the repairs are necessary. The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact. According to the Agency, no federal laws would be violated if the provisional variance is granted by the Board. The Agency believes that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

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 responsibility is 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.

Having received the Agency recommendation that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 304.141(b) on the following conditions:

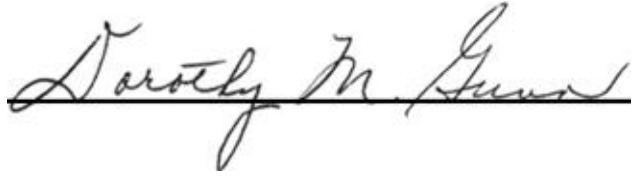
1. The term of this provisional variance shall commence April 27, 1997 at 4:00 p.m. and expire on May 1, 1997 at 4:00 p.m.
2. The petitioner shall notify the Agency's Maywood Regional Office by telephone, at 708/338-7900, before the afterburner is taken off line and again after the afterburner is brought back on line.
3. During the shutdown, petitioner shall keep the following records, and submit such records to the Agency within seven days of bringing the afterburner back on line.
  - a. Actual amounts of VOM emitted to the atmosphere;
  - b. The actual time the afterburner is shutdown, and the actual time the afterburner is restarted and brought back online; and
  - c. A list of associated emission units in operation during the times reported in paragraph 2 above.
4. Petitioner shall submit the records to:

Illinois Environmental Protection Agency  
Bureau of Air  
ATTN: Kunj Patel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Il. 62794-9276

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 1st day of May, 1997, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board