

ILLINOIS POLLUTION CONTROL BOARD

March 7, 1996

UNITED STATES TOBACCO)	
MANUFACTURING COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 96-187
)	(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)), United States Tobacco Manufacturing Company (USTMC) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow USTMC's tobacco processing facility to continue while modifications are being made to its capture and control equipment. This provisional variance is being requested because USTMC needs to change out the heat exchange bed media in the regenerative thermal oxidizer (RTO). This request for a provisional variance and the notification of recommendation (Recommendation) was filed with the Board by the Agency on Tuesday, March 5, 1996. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

The Recommendation was accompanied by a motion to file the Recommendation instantler, which recites that it was due to be filed on February 22, 1996. The Agency's motion is based on a 30-day filing requirement set forth in its own rules at 35 Ill. Adm. Code 180.302. The Board has no rules in this regard. Section 37(b) provides only that "[i]f the Agency fails to take final action within 30-days after the receipt of the request, the person [seeking a provisional variance] may initiate a proceeding under subsection (a) of Section 35" [i.e. a "regular" variance proceeding]. The Agency's motion for leave to file is accordingly denied as unnecessary.

As to the provisional variance itself, specifically, the Agency recommends that we grant USTMC a 10-day provisional variance for its facility located at 11601 Copenhagen Court, Franklin Park, Cook County, Illinois from the volatile organic material emissions requirements for "Other Emission Units" of the air pollution control requirements, as set forth in 35 Ill. Adm. Code 218, Subpart TT, specifically, 35 Ill. Adm. Code 218.986(a), for the period beginning March 22, 1996, and expire on March 31, 1996 when the emission capture and control equipment, specifically, the RTO is modified.

Upon receipt of the request, the Agency issued its recommendation, notifying the Board that failure to grant the requested 10-day provisional variance would impose 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 notifying the Board that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 218.986(a), subject to the following conditions:

1. ***The term of this provisional variance shall commence on March 22, 1996 and expire on March 31, 1996;***
2. Should USTMC fail to complete the modification of the RTO prior to the onset of the 1996 ozone season on April 1, 1996, it shall shut down any emission units controlled by the RTO until such time as the RTO is fully operational and can control emissions pursuant to 35 Ill. Adm. Code 218.986(a); and
3. ***The petitioner shall notify the Agency upon installation and startup of the RTO, by sending notification addressed as follows:***

Mr. Brooke Peterson
Bureau of Air
Illinois Environmental Protection Agency
2200 Churchill Road, P.O. Box 19276
Springfield, IL 62794-9276

The certificate of acceptance shall take the following form:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 96-187, March 7, 1996.

Petitioner

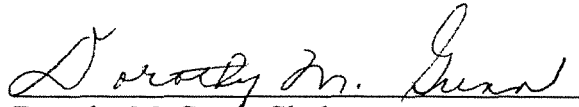
Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of March, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

