

ILLINOIS POLLUTION CONTROL BOARD
July 7, 1995

GENERAL BUSINESS FORMS, INC.,)
)
 Petitioner,)
)
 v.) PCB 95-155
) (Variance-Air)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondents.)

ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on two motions by the Illinois Environmental Protection Agency (Agency). The first is a motion to dismiss which was filed on June 20, 1995, and the second is a motion for extension of time to file the recommendation. The Board received a response to the motion to dismiss on June 27, 1995, from the petitioner.

The Agency argues that the petition for variance is "procedurally improper" as the "only compliance plan included in the petition is that GBF [petitioner] intends to seek an adjusted standard". (Mot. at 1-2.) The Agency maintains that it is "procedurally inappropriate" to seek a stay of a regulation through a variance proceeding when ultimately the relief being sought is an adjusted standard. (Mot. at 2.)

The petitioner maintains that the Agency's motion to dismiss should be denied as there is no statutory or regulatory authority which would allow the dismissal of the petitioner's petition. (Res. at 3.) The petitioner also argues that the stay which the petitioner has received while this variance is pending is a stay to "the same extent" that petitioner would have received if filing an adjusted standard petition. (Res. at 4.)

A variance by its nature is a temporary reprieve from compliance with the Board's regulations. (Monsanto Co. v. IPCB (1977), 67 Ill.2d 276, 367 N.E.2d 684.) A variance petitioner accordingly is required, as a condition to grant of variance, to commit to a plan that is reasonably calculated to achieve compliance within the term of the variance. (City of Mendota v. IPCB (3d Dist. 1987), 161 Ill. App. 3d 203, 514 N.E.2d 218.) However, the Board has found that in some exceptional circumstances variance may be granted even though petitioner does not have a final compliance plan. See Mobil Oil v. IEPA (Sept. 20, 1984, 60 PCB 99; IPC, Clinton Plant v. IEPA (May 22, 1989), PCB 88-97, 100 PCB 181); Amerock v. IEPA (Nov. 11, 1985), PCB 84-62, 66 PCB 411; Zeigler Coal v. IEPA (Aug. 22, 1991), PCB 91-12, 125 PCB 331.) In each of these exceptional circumstances the Board has required assurance, commonly through conditions

attached to the grant of variance, that negative environmental impact during the term of the variance be minimal and temporary.

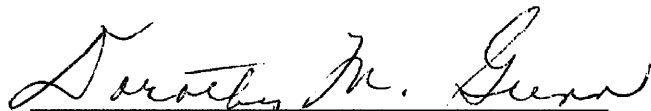
The Board has found that a variance request premised upon petitioner's filing of a proposal for site-specific relief is not a compliance plan, since it is a matter of speculation whether such regulatory relief may be granted. (Citizens Utilities Company of Illinois v. IPCB et al. (3rd Dist. 1985), 134 Ill. App. 3d 111, 479 N.E.2d 1213.) The pendency of a rulemaking does not stand by itself as grounds for grant of a variance. (Section 35(a) of the Act; Citizens Utilities Company of Illinois v. IPCB, supra; City of Lockport v. IEPA (September 11, 1986), PCB 85-50, 72 PCB 256, 260; General Motors Corporation, Electro-Motive Division v. IEPA (February 19, 1987), PCB 86-195, 76 PCB 54, 58; Alton Packaging Corp. v. IEPA (February 25, 1988), PCB 83-49, 86 PCB 289, 299, Borden Chemicals v. IEPA (October 25, 1990) PCB 90-130, 115 PCB 453.)

The Board today finds that a potential request for adjusted standard relief is likewise not a compliance plan. As the Board rarely grants variance relief absent a compliance plan, the Board finds this petition deficient. Therefore, the Board directs the petitioner to file an amended petition with the Board no later than August 11, 1995, or this matter will be dismissed.

The Board grants the motion for extension of time to file the recommendation.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 14 day of July, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board