

ILLINOIS POLLUTION CONTROL BOARD
June 4, 1998

CATERPILLAR, INC. (Mapleton Plant),)
)
 Petitioner,)
)
 v.) PCB 98-163
) (Provisional Variance - Water)
 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) (1996)), Caterpillar, Inc. (petitioner) has requested that the Board grant a provisional variance from certain conditions of its National Pollutant Discharge Elimination System (NPDES) Permit No. IL0001830 and 35 Ill. Adm. Code 309.102(a) and 304.141(b) for its Mapleton Plant, located near the Village of Mapleton, in Peoria County, Illinois. The request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on June 2, 1998. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two days of this filing.

Pursuant to Section 35(b) of the Act (415 ILCS 5/35(b) (1996)), the Agency, by and through its Director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue to operate its gray iron foundry pending approval of its request to modify its current NPDES permit. The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the modification is 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. 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 petitioner.

Specifically, the Agency recommends that the Board grant petitioner a 45-day provisional variance for its Peoria County facility from conditions and effluent discharge limits, as set forth in NPDES permit No. IL0001830 and in 35 Ill. Adm. Code 309.102(a) and 304.141(b). This variance period is recommended to commence on May 22, 1998, the first day that discharge became necessary to continue operations, and to continue for 45 days, or whenever operations are no longer hampered by excessive rainfall, whichever occurs first.

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) (1996). 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 petitioner a provisional variance from certain effluent discharge limits, as set forth in NPDES permit No. IL0001830, 35 Ill. Adm. Code 309.102(a), and 304.141(b), subject to the following conditions:

1. This variance period commences on May 22, 1998, the first day that discharge became necessary to continue operations, and continues for 45 days, or whenever operations are no longer hampered by excessive rainfall, whichever occurs first.

Petitioner shall take all necessary actions to ensure that rain water is drawn in such a manner as to cause the least disruption of the ponded storm water. Grab samples shall be taken once per day, each day the discharge is occurring at a representative location and monitored for total suspended solids. Petitioner shall continue to meet the additional limits of its NPDES Permit No. IL0001830.

2. Petitioner shall notify Lyle Ray at the Agency's Peoria regional office by telephone, at 309/693-5463, when pumping begins and again when pumping has been discontinued. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attn: Erin Rednour
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

3. Petitioner shall perform the necessary pumping as expeditiously as possible to minimize the time period that discharge occurs.

Petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as is the written notice required in the above condition; petitioner shall forward that copy within ten days of the date of this order of the Board, and 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 98-163, June 4, 1998.

Petitioner

Authorized Agent

Title

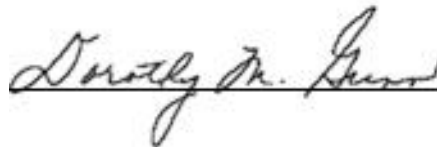
Date

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; 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 4th day of June 1998 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board