

ILLINOIS POLLUTION CONTROL BOARD  
December 1, 1994

CABOT CORPORATION, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 94-155  
 ) (Variance)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on Cabot Corporation's October 14, 1994 motion for modification. Cabot seeks modification of the Board's September 15, 1994 opinion and order granting Cabot's petition for variance. On November 30, 1994, the Illinois Environmental Protection Agency (Agency) filed its response to Cabot's motion, along with a motion for leave to file that response *instanter*. The motion for leave to file *instanter* is granted.

Cabot asks that the Board modify conditions two and three of our September 15, 1994 order granting Cabot's request for variance from a condition of its existing variance.<sup>1</sup> Condition two currently requires Cabot to replace the tubing for its underground injection control (UIC) well number two either within sixty days after Cabot's new UIC well number three becomes operational, or by March 24, 1995, whichever is earlier. Condition three provides that the variance expires no later than March 25, 1995. The Board stated in our September 15 order that:

although Cabot requests an ultimate compliance date of 21 months from grant of variance, 21 months would extend far beyond the expiration of the existing variance. Cabot has not requested, nor has it provided information in support of, an extension of the underlying variance. (Slip op. at 4.)

Therefore, the Board did not extend the expiration date of the variance.

In the instant motion for modification, Cabot asks that conditions two and three be modified to require that the tubing in well number two need not be replaced until 60 days after well number three becomes fully operational, or by December 31, 1996,

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<sup>1</sup> That existing variance was granted by the Board on March 25, 1993, in docket PCB 92-179.

whichever is earlier. Cabot contends that its petition for variance clearly contemplated that the expiration date of its existing variance be extended. Cabot asserts that by asking for an ultimate compliance date of 21 months after the grant of variance, it clearly intended to obtain relief past the expiration date of the original variance. Cabot further maintains that it included sufficient information in its petition regarding its progress to warrant an extension of the expiration date. Finally, Cabot contends that failing to extend the deadline would impose an arbitrary or unreasonable hardship.

In its response, the Agency states that Cabot's best opportunity to remove the tubing and run a casing inspection log without exceeding injection capacity or cutting normal production, during its 1994 annual fall shutdown, has come and gone. The Agency contends that it seems as though the nearer in time the operation of well number three approaches, the farther away is the time when Cabot will finally be required to remove and replace the tubing in well number two. In conclusion, the Agency paraphrases its original recommendation, that there must be some outer time limitation placed upon how long Cabot may continue to postpone removing the tubing. The Agency points out that the risk of corrosion and failure of the tubing, and resultant release of hazardous constituents to the environment, as minimal as it may now appear, will increase as time continues to pass.

After considering the contentions presented in the motion and in the Agency's response, the Board will grant the motion for modification in part. Initially, the Board reaffirms its conclusion reached in our September 15, 1994 order: that Cabot did not request an extension of the expiration date of the variance. Cabot's May 18, 1994 petition for variance specifically states that Cabot seeks "a variance from Condition No. III of the Board's March 25, 1993 [o]rder." (Petition at 5.) No matter how much may be inferred or implied from Cabot's request that the deadline for removal of the tubing be extended for 21 months, the Board believes that a variance petitioner has an obligation to specifically request, and support, all necessary relief.

Nevertheless, because Cabot has now specifically requested and supported its request for extension of the compliance deadline, and in the interests of administrative economy, the Board grants the modification in part. Cabot has provided sufficient information on the progress of construction of well number three for the Board to find that Cabot has demonstrated satisfactory progress. Cabot states that it expects to have completed all activities for well number three within its control by February 15, 1995. However, Cabot states that it then faces regulatory obstacles to actual operation of well number three, including action required by the Agency, the United States

Environmental Protection Agency (USEPA), and the Board, and that the timing of those actions is out of Cabot's control. (Motion at 7-9.) Cabot concludes that because the Board originally granted 21 months for the construction of well number three and removal of tubing in well number two, an additional 21 months, or until December 31, 1996, is reasonable.

The Board recognizes that the timing of final action by the regulatory agencies is not within Cabot's direct control. However, we disagree that it is reasonable to allow the full 21 months originally granted for construction and all other necessary activities for well number three, when, according to Cabot's own statements, the construction of well number three and the preparation of the necessary petitions should be completed by February 15, 1995. Therefore, we will extend the deadline for replacement of the tubing until March 24, 1996, or until 60 days after well number three is fully operational, whichever is earlier. That date is one full year longer than the period granted in our September 15 order, and should provide adequate time for compliance.

The order set forth below supersedes and replaces the order issued by the Board on September 15, 1994.

#### ORDER

The Board hereby grants Cabot Corporation (Cabot) a variance for its Tuscola, Illinois facility from condition III of the Board's March 25, 1993 order in PCB 92-179. The variance is subject to the following conditions:

1. Cabot shall continue to comply with the requirements of conditions I and II of the March 25, 1993 order in PCB 92-179.
2. Cabot shall replace the tubing for well number 2 either within sixty (60) days after well number 3 is operational, or by March 25, 1996, whichever is earlier.
3. The terms of the variance granted on March 25, 1993, as amended by this order, shall expire no later than March 25, 1996.

Within forty-five days of the date of this order, Cabot shall execute and forward to:

Daniel P. Merriman  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
2200 Churchill Road  
Springfield, Illinois 62794-9276

a certificate of acceptance and agreement to be bound to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45-days renders this variance void. The form of certificate is as follows.

I (We), \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 94-155, dated December 1, 1994.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

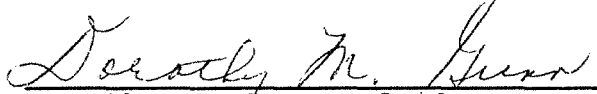
\_\_\_\_\_  
Date

IT IS SO ORDERED.

Joseph C. Yi abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders 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 1<sup>st</sup> day of December, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board