

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1994

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

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

This matter is before the Board on Cabot Corporation's May 18, 1994 petition for variance. Cabot seeks a variance from a condition of the Board's March 25, 1993 order in PCB 92-179. The condition at issue required Cabot to "replace the tubing for well number 2 either within sixty (60) days after well number 3 is operational or during the 1994 facility shutdown, whichever is earlier." Cabot seeks to postpone the removal of the tubing in well number 2 until after its new underground injection control (UIC) well (known as well number 3) is operating. For the reasons set forth below, the variance is granted.

AGENCY RECOMMENDATION AND MOTION

The Illinois Environmental Protection Agency (Agency) filed its recommendation on September 6, 1994, recommending that the variance be granted subject to conditions. The recommendation was accompanied by a motion for leave to file *instanter*. The Agency states that because the permit reviewer familiar with this case is on an extended leave of absence, other Agency personnel not as familiar with the site have been assigned to this case, leading in part to delay in filing the recommendation. The Agency further states that the press of other business prevented the filing of the recommendation any earlier, and alleges that no undue prejudice will result from a grant of the motion for leave to file *instanter*.

The Board is aware that personnel matters are a practical problem, and indeed deals with those problems itself. However, we also note that the variance recommendation was due 30 days after the filing of the petition, or on June 17, 1994. (35 Ill. Adm. Code 104.180.) We received the recommendation on September 6, 1994, just 9 days before the required decision deadline. Thus, we cannot accept the Agency's allegation that there is no undue prejudice from a grant of the motion. Nevertheless, because the Agency is required by statute to file a recommendation (415 ILCS 5/37(a) (1992)), the motion for leave to file *instanter* is granted.

BACKGROUND

Cabot's facility at Tuscola, Douglas County, Illinois, is an inorganic chemical manufacturing plant. The facility manufactures fumed silicon dioxide marketed under the registered trademark of Cab-O-Sil. The facility has operated from 1958 to the present and employs approximately 175 persons. The facility is located three miles west of Tuscola and occupies 100 acres. (Pet. at 2)

On site at the facility are two UIC wells permitted by the Agency. (Pet. at 2.) Cabot currently disposes of approximately 200 gallons of hazardous waste per minute (gpm), with maximum injection rates of 100 gpm at well number 1 and 250 gpm at well number 2. (Pet. at 2-3.)

REQUESTED VARIANCE

Cabot requests a variance from condition III of the Board's March 25, 1993 order in PCB 92-179.¹ Condition III states:

Cabot shall replace the tubing for well number 2 either within sixty (60) days after well number 3 is operational or during the 1994 facility shutdown, whichever is earlier.

Cabot seeks to postpone the removal of the tubing in well number 2 until sixty days after its new UIC well (known as well number 3) is operating. Cabot states that it filed a permit application for well number 3 with the Agency and the United States Environmental Protection Agency (USEPA) in September 1992, but that as of the date of filing of this petition for variance (May 18, 1994), no permit had been issued. Cabot states that the tubing for well number 2 should not be removed until well number 3 is operational, because well number 2 will have to be shut down for approximately two weeks in order to remove the tubing to perform the test, and then replace the tubing. Since well number 1 does not have sufficient capacity to meet the facility's waste disposal needs alone, the entire facility would have to be shut down for the period needed to perform the tests and replace the tubing. (Pet. at 3-5.) Thus, Cabot asks for an extension of the time in which to perform the required tests.

The Agency notes that it generally agrees with the facts set

¹ That order granted Cabot's request for variance from the requirement that casing inspection logs be run every five years. (35 Ill. Adm. Code 730.168(d)(4).) That variance continues in effect, and expires on March 25, 1995. Cabot has not requested an extension of that expiration date.

forth in Cabot's variance petition, with the exception of the allegation that no permit for well number 3 has been issued. The Agency states that it issued a final permit on May 13, 1994, and that the permit was mailed to Cabot under a cover letter dated May 20, 1994. Thus, Cabot has now received a permit for well number 3.

CONSISTENCY WITH FEDERAL LAW

Cabot contends that the requested variance is consistent with both federal and state law. Cabot states that on October 7, 1992, USEPA amended its rules so that a casing inspection log is no longer required every five years. Instead, the amended federal regulation now requires that casing inspection logs be run whenever the owner or operator conducts a workover in which the injection string is pulled. The rule does allow USEPA to require the test every five years, if it has reason to believe that integrity may be adversely affected by naturally-occurring or man-made events. (40 C.F.R. §146.68(d)(4).) Cabot also notes that on September 13, 1993 the Board updated the corresponding Illinois rules to reflect the change. (35 Ill. Adm. Code 730.168(d)(4).) Thus, Cabot concludes that the variance is consistent with the amended federal and state regulations.

The Agency agrees with Cabot's discussion of the amended federal rules, and states that the requested variance apparently violates no federal laws or regulations.

HARDSHIP

Cabot maintains that requiring it to remove the tubing in well number 2 before well number 3 is operational would create an arbitrary and unreasonable hardship, because: 1) shutting down the well to perform the tests would require that the facility itself be closed, at great cost to Cabot; 2) Cabot has recently demonstrated, through mechanical integrity testing procedures that there is no evidence of fluid movement along the bore hole; 3) USEPA has recognized, when amending the federal regulation, that it is possible to adequately test for mechanical integrity without removing the tubing; 4) USEPA and the Board have amended the federal and state regulations so that they no longer require a casing inspection log every five years; and 5) the unnecessary removal of the tubing can place undue stress on the well components. Cabot also contends that postponing the removal of the tubing will pose no danger to the human, plant, or animal life in the affected area, since mechanical integrity tests performed in October 1992 show no evidence that well number 2 lacks mechanical integrity. Finally, Cabot concludes that it should not be penalized because well number 3 is not yet permitted and operational, because it has done what it can to ensure that the well is operational as quickly as possible.

The Agency accepts Cabot's statement that immediate compliance with condition III would require a shut-down of the entire facility, at "great cost" to Cabot, although the Agency states that it does not have knowledge of the actual costs. The Agency believes that these kinds of costs are insufficient to excuse immediate compliance if there was a significant risk of harm to the environment. However, given the present facts, the Agency believes that there is no significant risk of harm to the public or the environment if the requested variance is granted.

CONCLUSIONS

After considering the record and the arguments of both Cabot and the Agency, the Board finds that immediate compliance with condition III of the Board's March 25, 1993 order in PCB 92-179 would impose an arbitrary or unreasonable hardship on Cabot. Cabot has made efforts towards ensuring that well number 3 is operational soon, and those efforts have resulted in the issuance of the permit for well number 3. Those efforts, in combination with the fact that neither the federal nor the state rules currently require that the casing inspection log be performed every five years, persuade the Board that the requested variance should be granted.

Cabot has requested that it be allowed to postpone action on well number 2 until sixty days after well number 3 is allowed to operate, and contended in its petition that action on well number 2 should not be linked to an arbitrary date in the future because the permit for well number 3 had not yet been issued.² In the alternative, Cabot requests that the date for action on well number 2 should be 21 months after the variance is issued, which was the length of the variance issued in PCB 92-179. The Agency contends that there should be "some reasonable outer time limit" beyond which Cabot cannot postpone action on well number 2, irrespective of the status of well number 3.

The Board notes 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.³ The record lacks any information on the current status of construction of well number 3, so that we do not know when well number 3 might be operational. Additionally, the Agency has not indicated what it

² As noted above, the permit for well number 3 was issued on May 13, 1994, and mailed to Cabot on May 20, 1994.

³ For example, extension of a variance requires proof of satisfactory progress. (415 ILCS 5/36(b) (1992).)

considers to be a "reasonable outer time limit". Therefore, the Board will impose a time limit for action on well number 2 of sixty days after well number 3 is operational, or March 24, 1995, whichever is earlier. We have chosen the March 24, 1995 deadline because it is the day before the variance expires. As noted above, Cabot has not requested an extension of the variance itself.

This opinion constitutes the Board's findings of fact and conclusions of law.

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 24, 1995, 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, 1995.

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 September 15, 1994.

Petitioner

Authorized Agent

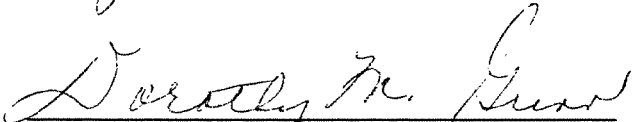
Title

Date

IT IS SO ORDERED.

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 opinion and order was adopted on the 15th day of September, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board