

ILLINOIS POLLUTION CONTROL BOARD
April 20, 1995

BTL SPECIALTY RESINS CORPORATION,)
)
 Complainant)
)
 v.) PCB 95-98
) (Variance - RCRA)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY)
)
 Respondent)

ORDER OF THE BOARD (by E. Dunham):

Petitioner, BTL Specialty Resins (BTL), filed a petition on March 14, 1995 for a determination that the material produced by its facility was not properly characterized by the Illinois Environmental Protection Agency (Agency) as K022 waste, or in the alternative, a variance from regulations applied to that waste. The Board accepted the matter for hearing on March 16, 1995. The Agency filed a motion to dismiss on April 13, 1995; and BTL filed a response to the motion on April 17, 1995.

A motion to dismiss, like a motion for summary judgment, can succeed where the facts, taken in a light most favorable to the party opposing the motion, prove that the movant is entitled to dismissal as a matter of law. The Agency claims that the petition of BTL is inconsistent with Federal law, and should be dismissed. To dismiss, there can be no material facts in dispute that could reasonably support BTL's proposition that the material formed in its process is not K022 waste. The Board holds that the facts in this case are not so clearly slanted as to admit only one possible outcome to the threshold determination that the material is not K022 waste.

Further, the Agency argues that a variance can not properly issue in a case such as this. BTL quotes a law review article by Professor Currie and the case of R.R. Donnelley & Sons Co. v. IEPA (February 23, 1989), PCB 88-79 for the proposition that variance was specifically envisioned by the drafters of the Environmental Protection Act as an appropriate means of deciding whether a determination of the Agency was correct in the first instance, or in the alternative, granting a limited time to achieve full compliance with the regulation. The Board notes that this method of review has been in accepted use for some time. (c.f. Village of Cary v. IPCB (1980), 82 Ill.App.3d 793, 403 N.E.2d 83, 38 Ill.Dec. 68 and Container Corporation of America v. IEPA (June 2, 1988), PCB 87-183, 90 PCB 052.)

Lastly, the Agency states that the variance petition is insufficient for failing to state an adequate compliance plan. The Board notes that the compliance plan submitted may be less

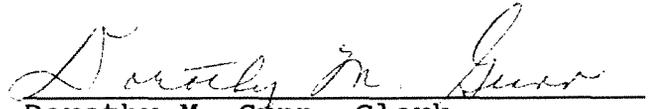
detailed than the Board requires in order to grant the variance, but the outline of a compliance plan is present and the details can be elucidated at hearing. The petition is not deficient on its face.

The Agency's motion to dismiss is therefore denied. This matter will proceed to hearing as expeditiously as possible.

IT IS SO ORDERED.

M. McFawn dissented.

I, Dorothy M. Gunn, Clerk of the Pollution Control Board, hereby certify that the above order was adopted on the 20th day of April, 1995, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board