

ILLINOIS POLLUTION CONTROL BOARD  
May 20, 1993

LONE STAR INDUSTRIES, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 92-134  
 ) (Variance)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

SAMUEL T. LAWTON, JR. AND MARY BETH DEBORD OF ALTHEIMER & GRAY  
APPEARED ON BEHALF OF THE PETITIONER;

JAMES C. RICHARDSON APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a petition for variance filed on September 17, 1992 and an amended petition filed on January 29, 1993, by Lone Star Industries (Lone Star). Lone Star is requesting a variance from the following sections of Subtitle G of Title 35: section 814.302(a), section 811.313, section 814.302(b)(1), section 811.103(b), section 811.314, section 811.320(d), section 811.317, section 815.202(a), section 815.203(b), section 812.316 and section 811.110(d).

The Environmental Protection Agency (Agency) filed its variance recommendation on the first petition on November 9, 1992. Hearing was held November 12, 1992 in Oglesby, Illinois. On December 30, 1992, Lone Star filed a response to the Agency's recommendation which for the first time presented details of an alternate compliance plan. The Board refused to consider Lone Star's response because it was untimely and instructed Lone Star to file an amended petition if it wished to pursue an alternate plan to that presented in the variance petition. Lone Star filed an amended petition on January 29, 1993. The Agency filed its variance recommendation instanter on March 22, 1993. A second hearing was held on March 24, 1993. The Agency filed its brief on April 19, 1993. Lone Star filed a response to the Agency's brief on April 22, 1993. Members of the public attended both hearings.

Lone Star filed a motion to correct typographical and recording errors in the transcript of the March 24, 1993 hearing. The motion to correct typographical and recording errors in the March 24, 1993 transcript is granted.

0142-0545

BACKGROUND

Lone Star operates a portland cement manufacturing plant and associated quarry in Oglesby, Illinois. (Am. Pet. at 2.) The plant has been in operation for over 100 years. (Tr. at 19.) Lone Star purchased the facility in 1982. (Tr. at 19.) The plant covers over 3,000 acres. (Tr. at 18.) The facility employs 105 people with a payroll of three and a half million dollars. (Tr. at 18.) Lone Star is presently in bankruptcy under Chapter 11 protection. (Tr. at 48.)

A by-product of the cement manufacturing process is cement kiln dust (CKD), a portion of which is deposited in a landfill on Lone Star's property. (Am. Pet. at 2.) About 95% of the CKD produced is returned to the process. (Am. Pet. at 36.) In 1992, Lone Star disposed of about 6,000 tons of kiln dust in the landfill. (Am. Pet. at 12.) The amount of CKD landfilled in future years will depend upon cement production and newly discovered uses for CKD. (Am. Pet. at 12.) The landfill is located in a quarry on the southeast bank of the Vermilion River, directly across from the industrial complex. (Am. Pet. at 12.)

The western end of the landfill was closed off by the construction of an earthen berm across the middle of the quarry. (Am. Pet. at 13.) It was Lone Star's intention to completely fill this area with CKD and other rubble and debris from the plant. (Am. Pet. at 13.) However, a portion of this area has not been filled. (Am. Pet. 13.) The depression behind the earthen berm traps water that runs off from the fill area and surrounding upland areas. (Am. Pet. at 13.)

Well samples from the landfill indicated that there was a mound of water in the landfill. (Am. Pet. at 14.) The water samples showed a number of constituents associated with CKD waste and was therefore considered to be leachate. (Am. Pet. at 14.) Additional testing showed that the saturated areas around the landfill were primarily the result of the presence of the landfill and not a natural or normal groundwater system. (Am. Pet. at 15.) The landfill appears to be separated from the groundwater table by a thick formation of shale that is essentially impermeable. (Am. Pet. at 15.)

Water from the landfill was found to be migrating from the landfill through a seep from the bluff on the northwest side of the landfill. The flow was caused by horizontal movement of the leachate above the shale layer that formed the base of the landfill. (Am. Pet. at 15.) This seep discharges a small volume of water that trickles down the face of the bluff above the Vermilion River. (Am. Pet. at 6.) The hydrogeology report shows that 3,400 gallons per day, or 2.53 gallons per minute, are seeping from the pit. (Exh. 4 at 20.) It appears that all of the water is absorbed by the vegetation on the hillside, but it is

possible that some could be discharged into the Vermilion River. (Am. Pet. at 6.)

Pursuant to the exemptions found in the Environmental Protection Act at 415 ILCS 5/21(d) (1992) no permit is required for the landfill. (Am. Pet. at 2.) However, the landfill is subject to the environmental protection standards and reporting requirements found in 35 Ill. Adm. Code 810 - 815. (Am. Pet. at 2.)

The landfill regulations require existing landfills to have closed by September 18, 1992 or comply with the stricter operating, closure and post-closure care standards of Subpart C, for landfills remaining open for more than seven years or Subpart D, for landfills remaining open between two and seven years. (35 Ill. Adm. Code 814.) Prior to March 18, 1992, Lone Star notified the Agency that it intended to close the landfill before September 18, 1992. (Am. Pet. at 3.) On September 16, 1992, Lone Star submitted a revised notification to the Agency indicating that it intended to continue use of the landfill beyond September 18, 1997. (Am. Pet. at 3.) The change in plans was due to further investigations by Lone Star to assure compliance with existing regulations. (Am. Pet. at 3.)

#### Variance Request

Lone Star is requesting a variance from the following regulatory requirements:

1. Sections 814.302(a) and 811.313 - Minimum of one foot cover within 60 days of waste placement extended to December 31, 1992.
2. Section 814.302(b)(1) - Installation of a leachate management system extended to December 31, 1994.
3. Section 811.301(b) - Diversion of runoff from undisturbed areas extended to December 31, 1992.
4. Section 811.314 - Installation of a final cover system that meets all stated design standards extended to one year after final Board action on an adjusted standard petition or rule change, or determination by the Board that the proposed final cover system meets the requirements of the existing rule.
5. Section 811.320(d) - Requirement for setting background concentrations for groundwater extended to 120 days after final Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable.

6. Sections 811.317, 815.202(a), 815.203(b) and 812.316 - Completion of groundwater impact assessment and submittal as part of Initial Facility Report extended to December 31, 1994.
7. Sections 815.202(a), 815.203(b) and 811.110(d) - Completion and submittal of a written Closure Plan as part of an Initial Facility Report extended to 120 days after final Board action on an adjusted standard petition or rule change modifying the applicable requirements for the final cover system.
8. Section 811.309(c)(4) - Basins will be constructed with liners to control seepage to groundwater extended to 180 days after Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable.

#### Agency Recommendation

The Agency notes that because this is a site for which no permit is required it does not possess the same volume of site-specific information that would be available with a permitted site. (Rec. at 2.) However, the Agency bases its recommendation on information from two site visits in the past two years. (Rec. at 2.) In the Agency's recommendation on the amended petition, the Agency supported its prior recommendations and comments submitted on the first petition and at hearing. The Agency recommends that the variance be granted subject to the following conditions:

- A. The minimum one foot of cover shall conform to the requirement specified in 35 Ill. Adm. Code 807.305(b).
- B. Within 120 days of the granting of this variance, Lone Star shall apply for and receive a permit from the Agency's Bureau of Water, Permit Section, to discharge waste waters collected from the western pit to a treatment facility. Additionally, the treatment facility shall apply for and receive a supplemental permit from the Agency's Bureau of Land, Permit Section. The waste waters shall be manifested to the selected facility for treatment during those cold weather months when it is not used in the production process or for those waste waters which are unused in the process. In any event, the pit shall be completely de-watered within 90 days from the issuance by the Agency of these permits, and shall be so maintained throughout the term of this variance.
- C. Sodium and the Field Parameters listed below shall be added to the quarterly groundwater sampling list.

- Bottom of well elevation (feet reference mean sea level) to be reported annually.
- Depth to water (feet below surface).
- Depth to water (feet from measuring point).
- Elevation of groundwater surface (feet reference mean sea level).

D. For the first quarter of sampling only. Lone Star shall conduct a broad volatile organic scan on samples of leachate removed from leachate wells NW-1, NW-2 and NW-3. Any parameter detected in this scan shall be added to the routine quarterly groundwater sampling list as well as any transformation or degradation products that could be derived from these constituents.

The Agency contends that the entire contents of the pond are considered as leachate due to stormwater runoff from the landfill and stormwater infiltrating the landfill and then exiting through the pond side. The Agency proposes condition B because such leachate ponds are archaic in light of modern waste management practices and current standards seek to insure that a minimum amount of leachate contaminates the environment. The Agency contends that the best course of action is to de-water the pond, keep it de-watered and ultimately fill it with appropriate fill materials. As an alternative, the Agency recommends that the pond be treated as a component of the site's leachate management system and meet the requirements of 35 Ill. Adm. Code Part 811.

The Agency recommends the additional testing in condition D to discover what contaminants are present at the site and obtain a better understanding of what is occurring at the site. The Agency contends that this will permit tracking of the concentrations of the substances to determine the need for any corrective or remedial action. The Agency maintains that the benefits obtained from this condition far outweigh its costs.

#### Lone Star's Response to the Agency's Recommendation

Lone Star does not object to conditions A and C. (Tr. at 131.) Lone Star proposes an alternate method of de-watering the pond to the off-site disposal recommended by the Agency in condition B. Lone Star contends that the testing requirements imposed in condition D exceed the monitoring requirements imposed by the regulations.

Lone Star contends that condition B is not necessary and proposes de-watering the pit by using the water in its manufacturing process. The water will be used in the production process as quench water, substituting for river water. (Am. Pet. at 28.) The quench water is totally evaporated in the process of cooling kiln exhaust gas before it enters the electrostatic precipitator. (Am. Pet. at 28.) With modifications to the

pumping system, up to 80,000 gallons per day of water can be pumped from the pit. (Am. Pet. at 28.) At this rate, Lone Star figures that 150 days will be needed to use the estimated 12 million gallons of water. (Tr. at 221.) However, due to maintenance shut downs and operation at lower rates, more than 150 days will be required. (Tr. at 222.) Lone Star estimates that the de-watering should be completed by the end of 1994. (Tr. at 251.) Lone Star contends that off-site disposal does not allow Lone Star to evaluate how well this leachate utilization concept works or the time required to de-water the pond. (Tr. at 224.)

Lone Star argues that off-site disposal of the water is infeasible from a cost standpoint. (Am. Pet. at 35.) Lone Star further argues that off-site disposal would create a new burden of noise, vibration and diesel exhaust for the areas of Oglesby adjoining and along highways leading into the plant. (Am. Pet. at 34.) Lone Star also contends that off-site disposal would cause fugitive dust emission because much of the transport route is unpaved. (Am. Pet. at 34.) Lone Star notes that with off-site disposal the water will probably end up in the Illinois River, with no resulting environmental benefit. (Am. Pet. at 34.)

Lone Star contends that the monitoring presently employed at the site is in complete accord with the applicable regulations. Lone Star contends that the proposed condition is gratuitous and irrelevant to the terms and conditions of the variance. Lone Star notes that samples from the three monitoring wells were tested for the parameters referenced in 35 Ill. Adm. Code 811.202. Forty-four parameters were tested including thirteen organics. The results were used in developing a monitoring program at the site and the results were supplied to the Agency. Lone Star contends that the list of parameters requested by the Agency exceeds what is necessary and reasonable for a nonhazardous waste landfill. Lone Star notes that it is not seeking a variance from any of the monitoring requirements.

#### DISCUSSION

The Agency has recommended granting the variance with certain conditions. Lone Star agrees to all but two of the conditions. At issue are the process to be used for de-watering the pond and the monitoring of certain parameters in groundwater testing.

#### De-watering of Leachate Pond

While Lone Star has provided some estimate of the amount of time that will be required to de-water the pond, it has noted that it is not known exactly how much water is in the pond or how much water the manufacturing process will consume. (Am. Pet. at

28.) The de-watering of the pond is also dependent on weather conditions. Lone Star will not use the water from the pond during periods of cold weather and the volume of water in the pond increases from stormwater run-off. While Lone Star has used the leachate from the pond in its process, it was at a lower rate and only for a limited time.

The Agency's proposal requires Lone Star to obtain a permit within 120 days and then to de-water the pit within 90 days of receipt of the permit. Lone Star estimates that it can de-water the pond by using the water in its manufacturing process in 150-200 days. Modifications to the pumping system, to increase the capacity to 80,000 gallons, were to be completed in April of 1993. (Am. Pet. at 29.)

The major difference in the two proposed procedures is the time required to de-water the pond. The Agency proposes de-watering the pond in 90 days but has allowed Lone Star 120 days in which to obtain the necessary permits. Use of the leachate in the process system will require a longer period of time to de-water the pond. However, based on the estimates provided by Lone Star, if the system operates near full capacity and is not subject to excessive shut-downs due to cold weather or maintenance, de-watering can be completed in 150 days. The Board considers this to be an insignificant time difference.

The Agency does not claim that the use of the water as a quench water in the manufacturing process creates any adverse environmental impact. In support of off-site disposal the Agency states that it seeks to ensure that a minimum amount of leachate contaminates the land, groundwater or other waters of the state. The extent of any contamination to the environment from the leachate pond is not presented in the record.

After considering the time difference, the costs of off-site disposal and the environmental impacts the Board finds that condition B as recommended by the Agency is not necessary. Therefore, the Board will not impose condition B. However, the Board finds that it is necessary to set a date certain for the complete de-watering of the pond and for the pond to remain de-watered throughout the term of the variance. Therefore, the Board will allow additional time for Lone Star to pursue de-watering of the pond by using the leachate as quench water. The pit shall be completely de-watered by March 31, 1994. The Board will require Lone Star to apply for and receive a permit prior to December 31, 1993, if it appears that the use of the leachate in the process system will not result in the de-watering of the pond by March 31, 1994.

The Board notes that this revision to condition B allows Lone Star additional time in which to de-water the pond by using the water in its manufacturing process. The condition, as

imposed by the Agency, would have required that the pond be completely de-watered by December 16, 1993. The condition contained in the variance will allow Lone Star to pursue de-watering by returning the water to its manufacturing process for approximately six months. Based on the results of this process, Lone Star must determine prior to December 31, 1993 if off-site disposal is necessary to completely de-water the pond by March 31, 1994. In effect, the Board's decision may delay the Agency's requested completion date by a maximum of 105 days; dewatering may in fact be completed at or ahead of the Agency's requested schedule. If off-site removal is required Lone Star must timely apply for and receive the necessary permits. Regardless of which method or combination of methods is used to de-water the pond, Lone Star must completely de-water the pond by the set date.

#### Groundwater Monitoring

The Board finds that the monitoring requirements imposed by condition D are consistent with the type of variance sought and would be beneficial in determining any environmental impact at the site. Lone Star by this variance is seeking additional time to prove alternate methods in the operation of the CKD landfill than those contained in the regulations. As it is unknown what effect these alternate methods may have on the groundwater, additional monitoring would be beneficial in detecting any possible contamination to the groundwater. The Board finds that the monitoring condition is relevant to the variance requested. The additional testing is warranted due to the extent of the variance and the nature of the landfill. The Board also finds that performing a broad volatile organic scan on the first quarter sampling is reasonable.

The Board notes that the previous testing performed by Lone Star of the leachate in accordance with Section 811.202 was to determine the contaminants in the leachate of an inert waste landfill. Based on these samples it was determined that the landfill cannot be classified as an inert waste landfill. Section 811.319 describes the groundwater monitoring program for putrescible and chemical waste landfills. Monitoring the groundwater for constituents that appear in the leachate is consistent with the requirements in Section 811.319(a)(2)(A). Section 811.319(a)(3)(A) requires the monitoring of each well for a broad range of organic chemical contaminants. The Board notes that the groundwater monitoring system used by Lone Star must meet the requirements of Section 811.319.

While the Board finds this condition to be reasonable, the Board recognizes that automatically adding all parameters "detected" in a single organic scan of the leachate to the routine groundwater sampling list may create an overly expansive testing protocol. The Board notes that the regulations, at 35 Ill. Adm. Code 811.319(a)(4)(A)-(B) require use of the practical



quantitation limit (PQL), and provide for confirmation testing procedures on a subsequent sample within 45 days. Absent actual testing data, the Board is unable to determine whether a conflict will arise between testing protocols recommended by the Agency in this variance and testing protocols contained in the Board regulations.

Lone Star will be required to conduct the leachate testing with detected parameters added to the routine groundwater sampling protocol, as requested by the Agency. Lone Star will be free to conduct confirmation leachate testing procedures on a subsequent sample within 45 days. If Lone Star believes appropriate analytical and statistical analysis of the leachate testing results leads to a conclusion on parameters necessary for long term groundwater monitoring which is different than required under the Agency condition, it may request relief from the Board. Lone Star is free to file for relief from final order, based upon newly discovered evidence, pursuant to 35 Ill. Adm. Code 101.301(b)(1). The Board specifically waives in this instance the requirement that such analytical evidence must have been available at the time of hearing. In any such motion the Board would need verified cost data on analytical testing expense to make an appropriate determination. To date, Lone Star has not supplied such testing cost data.

#### Retroactive Application

Lone Star is requesting a variance from the requirement of one foot of cover and the diversion of run-off to be extended until December 31, 1992. Lone Star notes that the work in these areas is substantially complete but additional work may be needed after settling has occurred. (Tr. at 73.) Lone Star notes that at the time of the filing of the first petition the work was underway or steps were being taken to get it underway. (Tr. at 73.) Lone Star chose the December 31, 1992 date to allow for delays and weather conditions. (Tr. at 74.) As the date requested for the expiration of the variance has already passed, retroactive application of the variance would be required.

As a general rule, in the absence of unusual or extraordinary circumstances, the Board renders variances as effective on the date of the Board order in which they issue. (citations omitted). (Modine Mfg. Corp. v. IEPA (July 25, 1991) PCB 88-25.) A variance is not retroactive as a matter of law, and the Board does not grant variance retroactivity unless retroactive relief is specially justified. (citations omitted) (Deere & Co. v. IEPA (September 8, 1988), PCB 88-22, 92 PCB 91, 94.) In Modine Mfg. Co. v. IEPA, (December 22, 1987), PCB 85-154, 84 PCB at 739-40, the Board granted a variance retroactive to the date of filing but stated:

Moreover, the Board is displeased with a request for a

variance which has a term, but for a few days, which is after the fact. While the Board allows that there may be circumstances where the latter condition might validly arise, it also believes that after-the-fact grants of variance are generally inconsistent with the intent of variance relief as enunciated by the Environmental Protection Act. At the minimum, it is not the intent of a variance to legitimize past failure to comply with rules and regulations.

Lone Star notes that failure to grant the request will expose Lone Star to potential enforcement actions. (Am. Pet. at 38.) Lone Star contends that it has been diligent in moving ahead toward compliance but the time allowed by the regulation is insufficient. (Am. Pet. at 38.)

The Board finds unusual circumstances existed in this matter. Lone Star's last minute change in plans to continue operation of the landfill considerably shortened the time for Lone Star to plan and comply with the regulations. Further, the complex nature of the site raises additional considerations in achieving compliance. Therefore, the Board will grant a retroactive variance from these provisions.

#### Expiration of Variance

The Board will not grant a variance for an indefinite period because by statute the duration of a variance is limited to five years. (415 ILCS 5/36(b) (1992).) Lone Star is requesting that variance be granted for an indefinite period in requests 4, 5, 7 and 8. The duration of the variance requested by Lone Star in 4, 5, 7 and 8 is subject to some action on the part of the Board (i.e., adjusted standard, rule change or Board determination). However, due to the nature of the variance and the method of compliance that Lone Star plans to follow, the Board can infer that compliance may be possible by means other than an adjusted standard or rule change within the maximum five year term of a variance. The Board will grant the variance requested in 4, 5, 7 and 8 for a term of two years. The Board believes that two years is a sufficient time period for Lone Star to pursue an adjusted standard, rule change or other form of relief to obtain compliance.

#### Declaratory Judgment

Lone Star seeks a determination from the Board on final cover composition and conditions. Lone Star has requested the Board to determine whether CKD is an acceptable alternative for cover consistent with the regulations. The Board will make no determination on this subject. The Board notes that the Agency has not provided any comment on the use of CKD as a cover. The Board finds that the record does not contain sufficient

information on the use of CKD as a cover material for the Board to determine if it is suitable for use as an equivalent cover. This type of determination is inappropriate for a variance proceeding. Lone Star is free to pursue this matter in an adjusted standard or a site-specific rule change.

Similarly, Lone Star seeks approval from the Board on the installation of its monitoring wells and the need for a liner on the leachate pond. The Board will not address these issues in this opinion and order but leaves these matters to be addressed in other proceedings.

### Hardship

In considering any variance the Board determines whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary and unreasonable hardship. (415 ILCS 5/35(a) (1992).) Furthermore, the burden of proof is upon the petitioner to show that the claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. Pollution Control Board (1977), 138 Ill. App. 3d 343, 481 N.E.2d 1032.)

Lone Star contends that the site conditions make achievement of full compliance with all regulatory standards in the specified time frame an unreasonable hardship. Lone Star argues that there is not enough time to make a precise prediction of the impact of the leachate management system. Lone Star notes that additional time is needed to complete the Groundwater Impact Assessment and the Closure Plan because the information is not yet available. Lone Star maintains that additional time is needed to develop its alternate design and to demonstrate its merits.

### Compliance Plan

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 (1987), 161 Ill. App. 3d 203, 514 N.E.2d 218.) Nevertheless, the Board has found that in some exceptional circumstances, variance may be granted even though petitioner does not have a final compliance plan. Included have been the circumstance where technology for compliance did not exist, and petitioner sought the time provided under the variance to search for new technologies (e.g., Mobil Oil v. IEPA (Sept. 20, 1984), PCB 84-37, 60 PCB 99; IPC, Clinton Plant v. IEPA (May 22, 1989), PCB 88-97, 100 PCB 181); where additional time was necessary for a proper assessment of environmental impact (e.g., 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); or where the term of the variance was of an exceptionally short duration (e.g. General Motors - Electromotive Division v. IEPA (February 19, 1987), PCB 86-195, 76 PCB 59.) Moreover, 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.

Lone Star proposes implementing a leachate management program for the existing landfill to reduce and eventually eliminate migration of leachate beyond the landfill boundaries, utilizing a combination of improved cover, runoff diversion, and pumping of leachate for process use. (Am. Pet. at 26.) Lone Star seeks additional time to present and test alternative plans for compliance. Lone Star also notes that if these alternatives are found to be unacceptable it will be able to obtain compliance but at an additional cost.

#### Environmental Impact

Lone Star does not anticipate that the proposed variance will have a negative environmental impact. (Am. Pet. at 31.) The extension of certain deadlines is being requested to assess the effectiveness of Lone Star's proposed methods of compliance. Lone Star contends that additional time is needed to evaluate the proposed leachate treatment system.

#### Consistency with Federal Law

Cement kiln dust is not regulated by United States Environmental Protection Agency regulations. (Am. Pet. at 39.) Lone Star further states that there are no federal concerns. (Am. Pet. at 39.)

#### CONCLUSION

Based on the record before it, the Board finds that Lone Star has presented adequate proof, that immediate compliance with the regulations at issue would impose an arbitrary or unreasonable hardship on Lone Star. The requested variance is granted subject to the conditions consistent with this opinion.

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

ORDER

Lone Star Industries (Lone Star) is hereby granted a variance for its cement manufacturing facility located in Oglesby, Illinois from the following provisions for the following periods:

1. Sections 814.302(a) and 811.313 - Minimum of one foot cover within 60 days of waste placement extended to December 31, 1992.
2. Section 814.302(b)(1) - Installation of a leachate management system extended to December 31, 1994.
3. Section 811.301(b) - Diversion of runoff from undisturbed areas extended to December 31, 1992.
4. Section 811.314 - Installation of a final cover system that meets all stated design standards extended to May 20, 1995 or one year after final Board action on an adjusted standard petition or rule change, or determination by the Board that the proposed final cover system meets the requirements of the existing rule, whichever is earlier.
5. Section 811.320(d) - Requirement for setting background concentrations for groundwater extended to May 20, 1995 or 120 days after final Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable, whichever is earlier.
6. Sections 811.317, 815.202(a), 815.203(b) and 812.316 - Completion of groundwater impact assessment and submittal as part of Initial Facility Report extended to December 31, 1994.
7. Sections 815.202(a), 815.203(b) and 811.110(d) - Completion and submittal of a written Closure Plan as part of an Initial Facility Report extended to May 20, 1995 or 120 days after final Board action on an adjusted standard petition or rule change modifying the applicable requirements for the final cover system, whichever is earlier.
8. Section 811.309(c)(4) - Basins will be constructed with liners to control seepage to groundwater extended to May 20, 1995 or 180 days after Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable, whichever is earlier.

The variance is granted subject to the following conditions:

- A. The minimum one foot of cover shall conform to the requirement specified in 35 Ill. Adm. Code 807.305(b).
- B. The pit shall be completely de-watered by March 31, 1994 and shall be so maintained throughout the term of this variance. Lone Star shall apply for and receive a permit by December 31, 1993, from the Agency's Bureau of Water, Permit Section, to discharge waste waters collected from the western pit to a treatment facility, if needed to completely de-water the pit by March 31, 1994. Additionally, the treatment facility shall apply for and receive a supplemental permit from the Agency's Bureau of Land, Permit Section.
- C. Sodium and the Field Parameters listed below shall be added to the quarterly groundwater sampling list.
  - Bottom of well elevation (feet reference mean sea level) to be reported annually.
  - Depth to water (feet below surface).
  - Depth to water (feet from measuring point).
  - Elevation of groundwater surface (feet reference mean sea level).
- D. For the first quarter of sampling only. Lone Star shall conduct a broad volatile organic scan on samples of leachate removed from leachate wells NW-1, NW-2 and NW-3. Any parameter detected in this scan shall be added to the routine quarterly groundwater sampling list as well as any transformation or degradation products that could be derived from these constituents.
- E. Within forty-five (45) days of the date of the Board's order, Lone Star shall submit the following Certification of Acceptance to:

Illinois Environmental Protection Agency  
James G. Richardson  
Division of Legal Council  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

The 45-day period will be held in abeyance during any period that this matter is being appealed. Failure to execute and forward this certificate within 45 days shall render the variance null and void. The form of the Certificate shall be as follows:

0142-0558

CERTIFICATION

I, (We), \_\_\_\_\_, having read and fully understanding the order in PCB 92-134 dated May 20, 1993, hereby accept that order and agree to be bound by all of its terms and conditions.

\_\_\_\_\_  
Petitioner

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

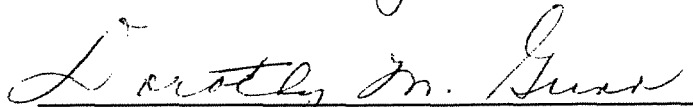
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. 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 20<sup>th</sup> day of May, 1993, by a vote of 6-0.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board