

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1985

BORDEN CHEMICAL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 82-82
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.

MR. SHELL J. BLEIWEISS OF SIDLEY & AUSTIN APPEARED FOR PETITIONER;
MR. E. WILLIAM HUTTON APPEARED FOR RESPONDENT.

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

This matter comes before the Board upon a June 22, 1982 filing by Borden Chemical Company (Borden) of a petition for variance from the 1,000 mg/l general use total dissolved solids (TDS) and 500 mg/l chloride water quality standards (WQS) of 35 Ill. Adm. Code 302.208. Two year relief (R. 8) is requested from Sections 302.208 and 304.105, the latter providing that no effluent shall cause a violation of a WQS. While relief from the 1.5 mg/l ammonia nitrogen general use WQS was also originally requested, such relief is now unnecessary. That portion of the proceeding has been dismissed (Order, April 18, 1985). An open waiver of the Board's time to render a decision was filed on July 29, 1982. Throughout the length of the proceeding, hearings were cancelled at least three times. On April 6, 1983, the hearing was continued "generally" on motion of Borden. There was no action until one year later, at which time the Illinois Environmental Protection Agency (Agency) filed another appearance. The last (third) Agency amended recommendation was filed on May 20, 1985. Hearing was held on July 15, 1985 in Springfield, Sangamon County, Illinois.

The prior variance granted in PCB 78-269 (34 PCB 71, June 22, 1979) expired on June 22, 1982 [see 35 PCB 557, October 8, 1979 dismissal of R 78-13]. It had provided relief from the TDS and chloride general use WQS's of old rule 203(f) [Section 302.208] and from old rule 402 [Section 304.105]. Borden was also granted a provisional variance for 45 days from the suspended solids effluent standard of old rule 404(c) [304.120(c)], such relief starting on June 14, 1982 (47 PCB 285, PCB 82-74, June 10, 1982).

The Borden plant is located in a rural area one mile west of Illiopolis, Illinois. It employs about 170 people and produces polyvinyl chloride (PVC) resin, PVC latex emulsions, styrene-

butadiene emulsions, polyvinyl acetate emulsions and PVC plastic film and moulding compounds. Vinyl chloride emission control is provided by combustion in an incinerator followed by scrubbing. This emission control system cost \$15,000,000 and became operational on October 21, 1978. The scrubbing operation produces a water solution of hydrochloric acid which is neutralized with caustic or soda ash to produce a neutral effluent containing salt. This effluent is added to the plant's other wastewater prior to discharge. The design average flow of Borden's wastewater treatment plant is 0.615 million gallons per day (MGD) while actual flow is 0.444 to 0.712 MGD (Ag. 2nd Am. Rec.).

The plant discharges about 400,000 gallons per day (GPD) into an unnamed ditch which has a seven-day, ten-year low flow of zero. However, Borden represented during the prior variance proceeding that for the thirteen years preceeding 1982, the ditch had never been dry. Upstream are located two other dischargers, a municipal water treatment plant which discharges filter back wash and a chicken hatchery which discharges cage and crate washings. Borden claims that the ditch is not used for recreational purposes and that chloride and TDS concentrations will not detract from whatever aesthetic value the ditch might have. The ditch runs about one and one-half miles before joining a drainage area known as Long Point Slough, which flows into the Sangamon River about one-half mile past the ditch.

The ditch is classified as a general use water and the applicable WQS's are 1,000 mg/l TDS and 500 mg/l chloride (Section 302.208). Discharge data supplied in the Agency's second and third amended recommendations demonstrate that the requested 2200 mg/l TDS and 700 mg/l chloride levels in the receiving ditch, downstream from the discharge, were substantially met during and since the last variance (3rd at 2, 2nd at 9). Reduced flow (Agency lists zero flow for September 1984) in September, October and November of 1984 caused the monthly averages for TDS to exceed 2200 mg/l. Agency water quality data for the Sangamon River for "water year 1982" are below the present general use WQS's of 1,000 mg/l TDS and 500 mg/l chloride (3rd Am. Rec.)

Borden has alleged that compliance with the Board's TDS chloride WQS regulations would impose an arbitrary or unreasonable hardship. Regarding alternate methods of TDS and chloride control, the record shows no change from the prior variance record. The Board finds that there is no proven conventional technology which is also economically feasible to treat TDS and chloride levels in Borden's wastewater. Therefore, the Board finds that compliance with Section 304.105 as it relates to TDS and chloride WQS's of Section 302.208 would impose an arbitrary or unreasonable hardship on Borden.

Borden has had more than sufficient time to submit environmental impact data and has failed to do so. In the prior

variance proceeding, the Board in its Opinion stated that any data collection pursuant to the variance should include "...biological surveys which include counts of salt tolerant and sensitive species as low flow conditions develop..." (34 PCB 71, 74, June 22, 1979, PCB 78-269). The only environmental impact evidence presented by Borden was in the original petition, wherein it was stated that the ditch is not used for recreation and that the ditch was not a habitat for "significant aquatic life" (Pet. at 8). The Agency itself was concerned with the potential for harm to downstream public water supply users but with new information has receded from its previous variance denial posture (3rd Am. Rec.). The Agency has stated that any adverse environmental impact would be minimal (Id.). While the environmental impact evidence is sorely lacking in substance, the Board finds, based on the data in the record, that any adverse environmental impact will be minimal during the term of any variance.

If Borden is planning to fulfill its representation at hearing that it will be filing a site-specific proposal (R. 11), an environmental study must be submitted at the time the proposal is filed. The study should address those points listed in the Board Order dismissing R78-13 (35 PCB at 558, October 18, 1979). Any such site-specific proposal should include copies of any documents from prior proceedings that Borden wants considered. The Board notes that the record in this proceeding is cluttered with a number of conflicting or overlapping proposals, recommendations, and clarifications. Outright incorporation of the prior records could lead to confusion. Of particular interest will be updated information on the source of contaminants and the potential means of removing them from the effluent by either process changes or treatment. Copies of any applicable NPDES permits should be included. Additionally, Borden is reminded that a revision or modification of a WQS is accomplished through either changing the use designation of the stream by a use attainability analysis or by revising the WQS criteria consistent with the stream designation [33 U.S.C. §1313(c)(2), 40 CFR 131]. If Borden seeks to revise or modify a WQS, it will have to submit information addressing such issues. Borden should be aware that the Board is currently considering Sangamon Basin Water Quality Standards in R83-20.

Petitioner is reminded that the filing of a proposal for site-specific relief is not a compliance plan for variance purposes. Any assumption that it will be granted is speculative. Citizens Utilities Company of Illinois v. IPCB et al., 479 N.E.2d 1213 (3rd Dist. 1985) affirming Citizens Utilities v. IEPA, PCB 83-124, April 19 and June 14, 1984.

By interim order of the Board dated September 5, 1985, the parties were requested to address whether the Board could grant variance relief from water quality standards consistent with federal law, specifically 33 U.S.C. §§1313, 1370. After meeting with the USEPA, the Agency stated that the Board may grant

variance relief from water quality standards based on a November 1977 Memorandum of Agreement between the two agencies (Agency Status Report, October 4, 1985).

Based on the minimal short-term adverse environmental impact and that immediate compliance would impose an arbitrary or unreasonable hardship, the Board hereby grants Borden a variance from 304.105 as it relates to the TDS and chloride WQS's of Section 302.208, subject to the conditions suggested by the Agency. The Board will continue the interim water quality standards of 2200 mg/l TDS and 700 mg/l chloride. The Board takes notice that the Agency did recently issue an NPDES permit for Borden's discharge and Borden's appeal is docketed as PCB 85-82.

Borden has requested relief retroactive to the date of issue of the latest applicable NPDES permit. The stipulation in clarification contains a May 25, 1985 issue date (p. 2, para 5) and the hearing record contains an effective date of June 22, 1985 (R. 12). The Agency recommends the grant of retroactive relief starting June 22, 1985 (R. 12). The Board rarely grants retroactive variances absent some showing of exceptional circumstances. Quaker Oats Company v. IEPA, 59 PCB 25 (July 19, 1984, PCB 83-107). The variance period will begin on the date of this Order, as no exceptional circumstances have been shown whatsoever. If anything there has been excessive delay on the part of Borden and presentation of less than optimal information supporting the petition.

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

ORDER

Borden Chemical Company is hereby granted a variance from 35 Ill. Adm. Code 304.105 as it relates to the TDS and chloride WQS's of Section 302.208 for its wastewater discharge at its Illiopolis, Illinois plant subject to the following conditions:

1. This variance shall commence on the date of this Order and expire on the date of issuance of a final Board Order in any site-specific proceeding or July 1, 1988, whichever is sooner.
2. Petitioner's effluent shall not cause the water quality in the unnamed ditch to exceed a monthly average concentration level of 2200 mg/l TDS or 700 mg/l chloride, based upon the sampling frequency contained in its NPDES permit.
3. Petitioner shall file its request concerning its Illiopolis plant for a site-specific rule change from the TDS and chloride water quality standards on or before April 1, 1986.

- 4. If Petitioner is denied full relief in the site-specific proceeding and additional compliance measures become necessary, they shall be completed in accordance with the following schedule:

<u>Items</u>	<u>Completion Date</u>
Submit plans and specifications to Agency for permit review.	6 months from date of final Board Order in site-specific rulemaking.
Complete construction of improvements.	15 months from date of submission of plans and specifications or July 1, 1988, whichever occurs first.

- 5. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Unit, Water Pollution Control Division, 2200 Churchill Road, Springfield, IL 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period during which this matter is being appealed. The form of this certificate shall be as follows:

Certificate

I, (We) _____, having read the Order of the Illinois Pollution Control Board in PCB 82-82, dated _____, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Date

Title

IT IS SO ORDERED.

Board Member J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of December, 1985 by a vote of 7-0.

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