

ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

DEL MONTE FOODS, USA,)
)
 Petitioner,)
)
 v.) PCB 90-121
) (Provisional Variance)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on the Agency's June 28, 1990 Recommendation that a provisional variance sought by Del Monte Foods, USA be denied on the grounds that it seeks retroactive relief.

The Board observes that this case involves its first receipt of an Agency Recommendation denying a provisional variance request pursuant to Sections 35(b) and Section 37(b) of the Act. These Sections provide:

Section 35(b)

The Board shall grant provisional variances, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency.

Section 37(b)

Any person seeking a provisional variance pursuant to subsection (b) of Section 35 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. The Agency may notify the Board of its recommendation. If the Agency fails to take final action within 30

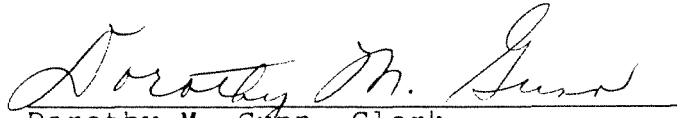
days after receipt of the request, the person may initiate a proceeding under subsection (a) of Section 35. The Board shall give prompt notice of its action to the public by issuing a press release for distribution to newspapers of general circulation in the county.

The Board notes that Section 37(b) makes Agency notification to the Board a discretionary act. The Board further notes that, while Section 35(b) requires that the Board take action within two days of receipt of an Agency notification that short term compliance would impose an arbitrary or unreasonable hardship, Section 35(b) does not require any Board action if the Agency notifies the Board of a contrary finding.

In order to clear the Board's docket, the Board hereby dismisses this matter and closes this docket. In the interests of administrative economy for both agencies, the Board requests that when the Agency recommends that a provisional variance be denied, that the petition not be forwarded to the Board.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 3rd day of July, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board