

of the provisional variance. On December 28, 1983, the Agency responded to Midwest by recommending that they file a standard variance request with the Board (Pet. Br. p. 6).

The provisional variance allowed Midwest the following effluent limitations:

	<u>30 day Average</u>	<u>Daily Maximum</u>
BOD	50 mg/l	100 mg/l
TSS	50 mg/l	100 mg/l

The Agency has determined that allowing an average discharge of up to 50 mg/l BOD will have no measurable environmental impact during the period of the variance. This determination is based on the highest volume previously discharged (3.1 MGD or 4.8 cfs) being only 0.08% of the lowest river flow recorded (5870 cfs) at the Route 9 bridge at Pekin during Water Year 1981. Any attempt to measure the impact of the discharge using presently accepted methodologies would be inconclusive since the level of impact would fall into the level of accepted error. Also, since the flow is so small in proportion to the river flow, other sources may have a considerably larger impact. Additionally, the DMR's submitted by the Petitioner for Outfall 001 during the past year indicate there have been no BOD and TSS effluent excursions other than those experienced during the time that PCB 83-159 was in effect. Petitioner's facility is in the category of organic chemical manufacturing for which there are no final federal regulations. Therefore, there are no federal regulations that would prohibit the Board from granting the requested relief.

This variance will be granted retroactive to December 31, 1983, for several reasons. The Board agrees that Midwest has been diligent in seeking relief on a timely basis, and that the lapse of the variance was at least partially a function of the procedural confusion surrounding the possible extension of the provisional variance.

Denial of this variance request would impose an arbitrary and unreasonable hardship for the following reasons:

1. Until the construction work is completed, Petitioner cannot meet its NPDES permit BOD and TSS effluent limitations due to decreased aeration basin capacity.

2. Construction of a temporary storage basin to store the raw wastewater during the construction period would take longer than the time required to complete the present aeration basin expansion construction.

3. Ceasing operation of the distillery would effect not only Petitioner, but also approximately 100 employees who would be laid off, and area farmers who sell their grain to the distillery as a raw material.

Midwest has requested a variance from Section 309.120(b) which the Agency has recommended granting. However, based on information in the record, it appears that Midwest is subject to Section 304.120(a), not (b). Accordingly, the Board will grant a variance from section (a), not (b). If this is not the case either party may move to modify today's Order. The Board will impose as a condition of this variance effluent limitations identical to those of the provisional variance. Midwest and the Agency have agreed on these limitations.

This Opinion constitutes findings of facts and conclusions of law in this matter.

ORDER

Midwest Solvents Company of Illinois is hereby granted a variance from 35 Ill. Adm. Code 304.120(a) subject to conditions as follows:

1. The variance period is retroactive to December 31, 1983.
2. The variance will expire on June 30, 1984, or at the time the construction is completed, whichever occurs first.
3. The sampling frequency and type shall continue as specified in Petitioner's last NPDES permit.
4. Midwest shall continue expansion work to the existing aeration basins so as to restore all aeration basins to operating status as expeditiously as possible.
5. During the period of this variance, Midwest shall operate and maintain its treatment facility so as to obtain the best quality of effluent possible. During the term of this variance the following effluent limitations shall apply:

	<u>30 day Average</u>	<u>Daily Maximum</u>
BOD	50 mg/l	100 mg/l
TSS	50 mg/l	100 mg/l

- 6. Within 45 days of the date of this Order, Midwest shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 84-5, April 5, 1984.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of April, 1984 by a vote of 6-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board