

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

CABOT CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-179
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On November 13, 1992, Cabot Corporation ("Cabot") filed a petition for variance from 35 Ill. Adm. Code 730.168(d)(4) and "from the related requirements contained in sections I.A(5), I.H(30)(c)(iv), I.H(30)(f), and I.H.(30)(g) of Cabot's Underground Injection Control ("UIC") Permit". (Pet. at 1.)¹ On December 4, 1992, Cabot filed an amended petition with the Board. On February 18, 1993, the parties filed a document entitled "Joint Stipulation of Cabot Corporation and the Illinois Environmental Protection Agency".² On March 8, 1993, the Agency filed an amendment to the stipulation pursuant to a Board order construing the stipulation as the Agency recommendation and requesting more information. Hearing was waived in this proceeding.

BACKGROUND

Cabot's facility at Tuscola, Douglas County, Illinois, is an inorganic chemical manufacturing plant. The facility manufactures fumed silicon dioxide marketed under the registered trademark of Cab-O-Sil. (Am.Pet. at 2.) The facility has operated from 1958 to the present and employs approximately 190 persons. (Am.Pet. at 2.) The facility is located three miles west of Tuscola and occupies 100 acres (Am.Pet. at 2) of sparsely populated rural area. (Am.Rec. at 2.)

On site with the facility are two UIC wells permitted by the Agency. (Am.Pet. at 3.) The facility currently generates approximately 200 gallons of hazardous waste per minute, with maximum injection rates of 100 gallons per minute at well 1 and

¹ The original petition will be cited as "Pet. at "; the amended petition will be cited as "Am.Pet. at ".

² The document filed as "Joint Stipulation of Cabot Corporation and the Illinois Environmental Protection Agency" will be cited as "Rec. at "; the amendment to that document will be cited as "Am.Rec. at ".

250 gallons per minute at well 2. (Am.Pet. at 3.)

REQUESTED VARIANCE

Cabot asks that a variance be granted from 35 Ill. Adm. Code 730.168(d)(4), which provides that:

Casing inspection logs must be run at least once every five years unless the permit specifies otherwise due to well construction or other factors which limit the test's reliability.

Cabot also seeks a variance from permit conditions which provide:

Section I.A(5) of the UIC Well No. 2 Permit, which requires that the tubing be replaced in March 1993 with tubing that is capable of withstanding annulus pressure testing at 500 psig;

Section I.H(30)(c)(iv) and its counterpart in Attachment B of the UIC Well No. 2 Permit, which require that the tubing be removed in March 1993 for the performance of a base temperature log and three post injection temperature logs;

Section I.H(30)(f) and its counterpart in Attachment B of the permit, which require that the tubing be removed in March 1993 for the performance of a cement bond log;

Section I.H(30)(g) and its counterpart in Attachment B of the permit, which require that the tubing be removed in March 1993 for the performance of an electromagnetic log. (Am.Pet. at 6.)

AGENCY RECOMMENDATION

As previously stated on February 18, 1993, the parties filed a document entitled "Joint Stipulation of Cabot Corporation and the Illinois Environmental Protection Agency". The Board notes that it does not accept "stipulations" in variance proceedings. (See generally, Olin Corporation v. IEPA, 45 PCB 415 (PCB 81-117, February 17, 1982) and Donnelley v. IEPA, 96 PCB 166, (PCB 88-79, February 23, 1989).) Thus, the Board construed the filing as the Agency's recommendation and directed the Agency to file additional information required pursuant to 35 Ill. Adm. Code 104.180. The Agency filed the additional information in a document entitled "Agency Supplemental Response to Agreed Stipulation in Lieu of Recommendation" on March 8, 1993.

The Agency agrees that a variance should be allowed by the Board with certain additional conditions. Those conditions are:

- I. That Cabot will submit a report on the first of each month with the following information for well number 2 for the first fifteen (15) days of the previous month:
 - (a) chart of seal pot level fluctuations (including both pressure and volume);
 - (b) injection rate information; and
 - (c) whether annulus fluid was added or deleted during the time.
- II. Cabot will provide representatives of the IEPA and the U.S. EPA with a telephone notification if, in Cabot's judgment, annulus fluid is being lost in a manner unrelated to normal temperature fluctuations.
- III. Cabot will agree to replace the tubing for well number 2 either within sixty (60) days after well number 3 is operational or during the 1994 facility shutdown, whichever is earlier.

ARBITRARY AND UNREASONABLE HARDSHIP

Cabot puts forth several arguments as to why complying with the general rule will create an arbitrary and unreasonable hardship. First, Cabot states that the permit for well 2 requires that by March 16, 1993, "the tubing be removed for certain mechanical integrity test, and replaced with tubing capable of withstanding an annulus pressure test at 500 psig". (Am.Pet. at 4.) Cabot indicates that the shut-down of well 2 will prevent Cabot from having a like means of disposing of its waste since the capacity of well 1 is insufficient to meet the facility disposal requirements. (Am. Pet. at 3.) Thus, Cabot maintains that unless Cabot receives a variance the whole facility will have to shut down while the required tests and replacement of tubing in well 2 takes place. (Am.Pet. at 4.) The resulting two-week shut-down would be at "great cost" to Cabot. (Am.Pet. at 10.) Cabot notes that after well 3 is fully operational, it will be able to perform the required work on well 2 without shutting down the plant. (Am.Pet. at 5.)

Second, Cabot argues that in October of 1992 mechanical integrity tests were run on well 2. The tests included an annulus pressure test, radioactive tracer survey, base temperature log, post-injection temperature logs and a bottom hole pressure test. (Am.Pet. at 5.) Cabot maintains that these

tests indicate that there is no evidence of fluid movement along the bore hole. (Am.Pet. at 10.)

Next, Cabot states that the United States Environmental Protection Agency (USEPA) amended its regulations on October 7, 1992, such that it is no longer necessary to run a casing inspection log every five years. (Am.Pet. at 5-6.) Further, Cabot argues that the amended language adopted by the USEPA "recognized that it is possible to adequately test for mechanical integrity without removing the tubing. (Am.Pet. at 10.)

In addition, Cabot argues that the "unnecessary removal of the tubing can place undue stress on the well components" (Am.Pet. at 10); while the postponing of the tests will pose "no danger to the human, plant, or animal life in the area". (Am.Pet. at 10.)

The Agency agrees that compliance with the rule of general applicability would create an arbitrary and unreasonable hardship for Cabot under these circumstances. (Am.Rec. at 4.) The Agency stated that it "accepts Cabot's representation that it would require an entire plant shut-down" to do the testing of well 2; and further, that Cabot's shut-down would cause loss of business. (Am. Rec. at 4.) The Agency also agrees that the postponing of the tests will not pose a significant risk of harm to the public or the environment if the variance is granted. (Am.Rec. at 5.)

CONSISTENCY WITH FEDERAL LAW

As previously indicated Cabot points out that Federal regulations were amended on October 7, 1992. The amended language states:

Casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the Director waives this requirement due to the well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The Director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events. (Am.Pet. at 5-6.)

Thus, Cabot maintains that granting the variance is consistent with federal law. (Am.Pet. at 8.) The Agency agrees that granting the variance is apparently consistent with federal law. (Am.Rec. at 6.)

DISCUSSION

Cabot and the Agency agree that, at this time, compliance with Section 730.168(d)(4) would create an arbitrary and unreasonable hardship. Cabot would be required to close down its operations for at least two weeks. Further, Cabot as recently as October 1992 tested well 2 and found no indications of a breach. Thus, the Board finds that at this time compliance with Section 730.168(d)(4) would create arbitrary and unreasonable hardship for Cabot.

A change in the federal regulations no longer requires a casing inspection log to be completed every five years. Thus, the variance request appears to be consistent with federal law. In addition, the Agency agrees with Cabot that no significant risk of harm to the public or environment exists. Therefore, the Board will grant the variance from 35 Ill. Adm. Code 730.168(d)(4). The Board notes that Section 36(b) of the Act limits the length of a variance to no longer than five years. Therefore, the Board will include a date specific on which the variance will expire.

The Board, however, cannot grant a variance from a permit condition. (Illinois Power Company v. IEPA, 59 PCB 71 (PCB 84-75, July 19, 1984) and City of Mount Olive v. IEPA, 63 PCB 191 (PCB 85-24, March 7, 1985).) Therefore, Cabot will have to seek modification of its permit from the Agency.

ORDER

Cabot Corporation is hereby granted a variance for its facility located in Tuscola, Illinois, from 35 Ill. Adm. Code 730.168(d)(4) subject to the following conditions:

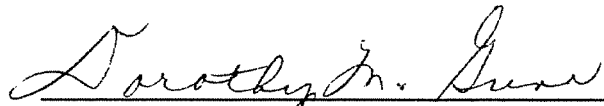
- I. That Cabot shall submit a report on the first of each month with the following information for well number 2 for the first fifteen (15) days of the previous month:
 - (a) chart of seal pot level fluctuations (including both pressure and volume);
 - (b) injection rate information; and
 - (c) whether annulus fluid was added or deleted during the time.
- II. Cabot shall provide representatives of the IEPA and the U.S. EPA with a telephone notification if, in Cabot's judgment, annulus fluid is being lost in a manner unrelated to normal temperature fluctuations.

- III. Cabot shall replace the tubing for well number 2 either within sixty (60) days after well number 3 is operational or during the 1994 facility shutdown, whichever is earlier.
- IV. The terms of this variance shall expire no later than March 25, 1995.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437; Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 25th day of March, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board