

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

BORDEN CHEMICALS AND PLASTICS,)
)
 Petitioner,)
)
 v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB 94-368
(Provisional Variance)

ORDER OF THE BOARD (by C. A. Manning):

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), Borden Chemicals and Plastics (Borden) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow Borden to continue operating during a period of wastewater treatment plant malfunction. Such request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Wednesday, November 30, 1994. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), the Illinois Environmental Protection Agency (Agency), by and through its Director, Mary A. Gade, seeks a provisional variance for Borden in order to allow it to continue operating during a period of wastewater treatment plant malfunction.

Specifically, the Agency recommends that we grant Borden a forty-five (45)-day provisional variance for its Sangamon County facility from the biochemical oxygen demand (CBOD₅) and suspended solids (TSS) effluent requirements, as set forth in 35 Ill. Adm. Code 304.120(c) and 304.141(a), beginning December, 1994, and continuing for no longer than 45 days.

This recommendation is essentially that the Board extend a previously-granted provisional variance that will expire December 3, 1994. The docket number of the previous provisional variance was PCB 94-300, granted on October 20, 1994.

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the repairs are necessary. The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact. The Agency

maintains that a grant of a provisional variance would violate no federal laws. The Agency finds that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. (See 415 ILCS 5/35 (b) & 36(c)). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation finding that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 304.120(c) and 304.141(a), on the following conditions:

1. The term of this provisional variance shall commence December 4, 1994, and shall continue for no longer than forty-five days;
2. The petitioner shall operate its plant during the term of this provisional variance in a manner that assures the best effluent practicable;
3. During the term of this variance, petitioner shall meet monthly average concentration effluent limits of 24 milligrams per liter (mg/l) CBOD and 40 mg/l TSS. Petitioners daily maximum concentration limits shall be 64 mg/l CBOD and 130 mg/l TSS.

The petitioner shall execute a copy of a Certificate of Acceptance of this provisional variance and forward that copy to the Agency addressed;

Illinois Environmental Protection Agency
 Division of Water Pollution Control
 Compliance Assurance Section
 2200 Churchill Road
 P.O. Box 19276
 Springfield, Illinois 62794-9276

Attention: Susan Davision

The petitioner shall forward that copy within ten (10) days of the date of this order of the Board, and the Certificate of Acceptance shall take the following form:

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 94-300, October 20, 1994.

Petitioner


Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control
Board, do hereby certify that the above order was adopted on the
1st day of December, 1994, by a vote of
7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board