ILLINOIS POLLUTION CONTROL BOARD
August 22, 1991

ABBOTT LABORATORIES, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	PCB 88-78 (Variance)

ROY M. HARSCH, APPEARED ON BEHALF OF THE PETITIONER; and PENNI S. LIVINGSTON APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter is before the Board on Abbott Laboratories' ("Abbott") petition for variance from Subpart T of 35 Ill. Adm. Code Section 215, filed on May 2, 1988. Subsequent to this initial petition, Abbott filed two amended petitions, the last of which was submitted on June 5, 1991. In the interim, Abbott waived the statutory time limit for Board decision pursuant to Section 38 of the Environmental Protection Act ("Act") (Ill. Rev. Stat. 1989, ch. 111-1/2 par. 1038). Hearing was held on June 19, 1990 in Waukegan, Illinois.

BACKGROUND

The history of this variance is inextricably linked to the pharmaceutical rulemakings, R86-10 and R88-14; the latter Opinion is hereby incorporated by reference. When R86-10 (Amendments to 35 Ill. Adm. Code 211 & 215 Organic Material Emission Standards and Limitations for Synthesized Pharmaceutical Manufacturing Plants) was adopted by the Board in 1988, Abbott filed for a variance from certain provisions of this rule. Shortly thereafter, Abbott petitioned the Board for a site-specific rule (R88-14).

Thereafter, the rulemaking took an unusual turn. At first, Abbott's proposal was contested by the Illinois Environmental Protection Agency ("Agency"). After four amended petitions and many negotiations later, R88-14 was transformed from a site-specific rule to one of general applicability. Moreover, the final version, as submitted in April of 1990, was filed as a joint petition by the Agency and Abbott.

Many of the difficulties stemmed from the inability of Illinois to obtain a federally approved State Implementation Plan (SIP). Because the manufacturing of pharmaceuticals releases volatile organic materials (VOMs) into the Illinois airshed and thus contributes to the formation of ozone, any relief requested by Abbott must be approved federally as well as at the state level.

R88-14 represents a negotiated agreement between Abbott, the USEPA and the Agency for current rules as they pertain to pharmaceutical manufacturers.

In R88-14 Abbott requested that the Board: 1) amend Section 215.480(a) to specifically exempt those sources detailed in Section 215.480(b); 2) raise the amount of VOM emissions that would be excluded from the 2.5 ton per year (tpy) under Section 215.480(b) to a level that would represent RACT; 3) alter Section 215.481(a)(1) to allow for incineration rather than surface condensers in that the former would not constitute RACT for removing acetylene emissions; and 4) allow Abbott to demonstrate compliance through various means other than stack testing. These issues were resolved in R88-14.

THE VARIANCE

Abbott seeks a variance from the effective date of R86-10 until the effective date of R88-14. R86-10 became effective on April 11, 1988 and R88-14 became effective on May 14, 1991. Abbott filed its variance petition on May 2, 1988.

We do not believe that any "backdating" is necessary. Section 38(b) of the Act states that:

> If any person files a petition for a variance from a rule of regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, UIC or NPDES program shall not be stayed. (Emphasis added).

Ill. Rev. Stat. 1989, ch. 111-1/2, par. 1038(b).

Abbott's variance petition was filed 21 days after April 11, 1988, but the twentieth day fell on a Sunday. Section 101.109 of the Board's rules state:

> Computation of any period of time prescribed by this chapter of this Act shall begin with the first calendar day following the day on which the act, event, or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday, or national or state holiday.

35 Ill. Adm. Code Section 101.109.

For purpose of stay, it is apparent that Abbott satisfied the 20 day time limit required by Section 38(b) of the Act. The Board finds that the operation of R86-10 was therefore stayed as to Abbott "pending the disposition" of this variance.

Further, Abbott did not request variance relief beyond the May 14, 1991 effective date of R88-14. Since that date has already elapsed, there is no issue remaining for determination in this matter. Accordingly, the Board finds that variance is unnecessary and this petition is therefore dismissed.

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

<u>ORDER</u>

The petition for variance by Abbott Laboratories is dismissed.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1990 supp., ch. 111-1/2, par. 1041) provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of August, 1991 by a vote of 7-0.

Dorothy M. Gunn /KR

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board