

ILLINOIS POLLUTION CONTROL BOARD  
March 11, 1993

IN THE MATTER OF: )  
)  
THE PETITION OF CABOT CORP. FOR ) AS 91-10  
AN ADJUSTED STANDARD FROM THE ) (Adjusted Standard)  
REQUIREMENTS OF 35 Ill. Adm. )  
Code 725.293 )

ORDER OF THE BOARD (by J. Anderson):

This matter is before the Board on the February 25, 1993 motion for reconsideration filed by the Cabot Corp. (Cabot). The motion seeks reconsideration of the January 21, 1993 order disposing of Cabot's December 15, 1992 motion for stay or in the alternative to dismiss without prejudice. The Agency did not respond. For the reasons explained below, the Board denies reconsideration.

The motion for reconsideration takes issue with two assertions in the January 21, 1993 order, and the motion states that the order is unclear as to which tank systems it applies. First, the motion disputes the Board's assertion that the time has now passed for filing a petition for adjusted standard as to the West Galigher Sump. Second, it states that the order implies that Cabot must file a separate petition for TK-0048 and TK-0051. The Board believes that Cabot misunderstood the order.

Cabot's December 15, 1992 motion sought a stay or, in the alternative, voluntary dismissal of the petition. By highlighting the deadlines for filing a petition no less than 24 months before the compliance deadline and a completed demonstration no later than 180 days after the filing of the petition (35 Ill. Adm. Code 725.293(h)(1) & (h)(3)), the Board intended to indicate that dismissal was not appropriate if each unit were viewed separately. Based on this, the following latest hypothetical deadlines would apply:

Unit Viewed Separate	Compliance	Applicable Deadline	
		Petition Filing	Completed Demonstration
North Galigher Sump	1-1-94	1-1-92	6-28-92
West Galigher Sump	1-1-95	1-1-93	6-29-93
AB Unit Trench	1-1-98	1-1-96	6-28-93
Tank Farm Sump	7-1-99	7-1-97	12-27-97
D Unit Trench	8-1-99	8-1-97	1-27-98
TK-0048 & TK-0051	5-1-02	5-1-00	10-27-00

This means that as of January 21, 1993, if Cabot were to begin the process anew by filing a new petition, the petition filing deadline has passed as to both the North Galigher Sump and the West Galigher Sump. Because it is too late to file a petition,

it is also too late to file a completed demonstration in such a new proceeding. Therefore, the Board's statement, as follows, was accurate:

The time for filing the petition (and, thus, the completed demonstration) is now past, at the very least as to the West Galigher Sump and the North Galigher Sump. These are dates derived from federal regulations, and the Board cannot simply waive them. Therefore, dismissal without prejudice is not possible at least as to those two "tanks".

January 21, 1993 order at 2.

Early in the course of this proceeding, Cabot and the Agency disputed the number of tank systems involved. Cabot viewed each unit noted above as a separate "tank system". The Agency viewed them conjunctively as a single "tank system". The Board has not resolved this issue, and when we drafted the January 21, 1993 order (and, still, as of this date), we have only Cabot's assertion that the parties have resolved it. This issue has important implications on the deadline for seeking relief. If all of Cabot's units are a single "tank system", the compliance deadline is January 1, 1994, and the deadline for filing a petition for an adjusted standard was January 1, 1992. If each unit constitutes a separate "tank system", the deadlines are as tabulated above.

The Board is not in the habit of resolving contested issues based on the assertions of only one side as to the position of the other. To avoid appearing to resolve the issue, and to remind Cabot that dismissal could prove fatal if the Board determined that all units constituted a single "tank system", we added the following caveat to the January 21, 1993 order:

By this order, the Board does not rule on any issues related to the petitioner's assertions other than the stay. Specifically, we take no position on Cabot's ability to file another petition for an adjusted standard for any of its AB Unit Trench, Tank Farm Sump, or D Unit Trench "tanks". The "single tank system"- "multiple tank systems" issue was formerly contested and we have no recent direct representations from the Agency that it has been resolved.

January 21, 1993 order at 2.

The Board expressly avoided deciding a vital issue that the record still does not clearly indicate is no longer contested between the parties. The Board expressly avoided granting a prayer for relief that could have severely prejudiced Cabot's

ability to seek relief if the resolution of that open issue turned against Cabot's position.

Finally, in its prayer in the motion of February 25, 1993, Cabot states as follows:

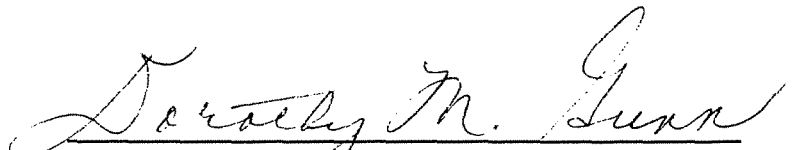
WHEREFORE, Cabot Corporation respectfully requests that the Board amend its January 21, 1993 Order in this matter to make clear that the Stay applies to the adjusted standard petition and demonstration for all the tank systems at Cabot's Tuscola, Illinois facility except the North Galigher Sump.

February 25, 1993 Motion for Reconsideration at 5.

We expressly refuse to do so. The stay applies to this proceeding before the Board, and not to the petition and demonstration as to any particular units. If Cabot wishes to not seek relief as to any particular units, it is free to do so, but the Board reserves any ruling on the issue as to what constitutes a "tank system". However, we remind Cabot that until the Board grants an adjusted standard as to a particular "tank system", whether a single unit or combination of units, compliance is required on the compliance deadline.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted by the Board on the 17<sup>th</sup> day of March, 1993, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board