

ILLINOIS POLLUTION CONTROL BOARD
March 28, 1991

ETHYL PETROLEUM ADDITIVES, INC.,)
)
 Petitioner,)
))
 v.) PCB 91-54
) (Provisional Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
 Respondent.)

CONCURRING OPINION (by J.D. Dumelle):

While I agree with the outcome of this case, I disagree with the language contained in part of the Order. In paragraph 3, the Board states:

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.

(PCB 91-54 at pg. 1).

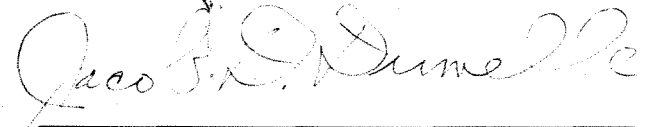
I continue to believe that this language is in direct contravention of the plain meaning of Section 36(a) of the Act.

In granting a variance the Board may impose such conditions as the policies of this Act require.

[Ill. Rev. Stat. 1989 chap. 111 $\frac{1}{2}$ 36(a)].

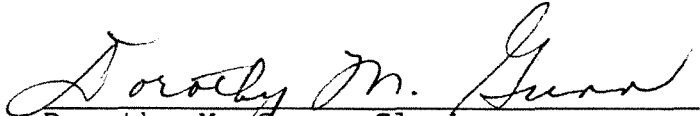
Although it is undoubtedly true that the Agency rather than the Board makes the determination as to whether or not an arbitrary or unreasonable hardship would befall the petitioner pursuant to Section 35(b) of the Act, I believe that section 36(a) of the Act grants this Board the power to review the substantive issues contained within provisional variances. (See, PCB 90-223, November 29, 1990 (Dissenting Opinion)).

For this reason, I respectfully concur.



Jacob D. Dumelle, P.E.
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 1st day of April, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board