

ILLINOIS POLLUTION CONTROL BOARD
April 11, 1991

SHERWIN WILLIAMS CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 91-62
)	(Provisional Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.C. Marlin):

This matter comes before the Board on receipt of an "Agency Determination" dated April 9, 1991. The determination refers to a request from Petitioner, Sherwin Williams Co., for a 90-day extension to the 90-day limitation on the accumulation of hazardous wastes imposed on generators, as set forth in 35 Ill. Adm. Code 722.134(b). The petition states that the accumulation date on the hazardous wastes is October 20, 1990.

The Agency states that it cannot recommend that the Board grant a provisional variance. The Agency further states that the petitioner failed to demonstrate that the materials remained on-site for longer than 90 days due to unforeseen, temporary and uncontrollable circumstances, as required by 35 Ill. Adm. Code 722.134(b) and that petitioner failed to prove that the requirements of 35 Ill. Adm. Code 722.134(b) impose an arbitrary or unreasonable hardship.

The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. See Ill. Rev. Stat. 1989, ch. 111½, pars. 1035(b) & (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.

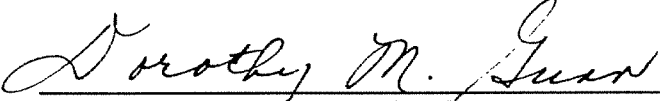
In the absence of an Agency recommendation finding that a denial of the requested relief would impose an arbitrary and unreasonable hardship, the Board cannot grant the Petitioner a provisional variance. Therefore, the Board dismisses the instant docket.

The Board requests that the Agency make no filing in the future relating to a provisional variance unless that filing is an Agency recommendation containing the statutorily-prescribed findings.

IT IS SO ORDERED.

J.D. Dumelle & B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 11th day of April, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board