

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2007

BIOMEDICAL TECHNOLOGY)	
SOLUTIONS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-149
)	(Variance - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On June 28, 2007, Biomedical Technology Solutions, Inc. (BMTS) filed a petition for a variance (Pet.) for its medical waste treatment devices used throughout the State. BMTS is located in Englewood, Colorado. BMTS seeks relief from 35 Ill. Adm. Code 1422 for the maximum time allowed to comply with the regulations. *See* 415 ILCS 5/35-37 (2006); 35 Ill. Adm. Code 104.204(k).

BMTS has requested a hearing on its petition. However, the petition does not meet the content requirements of 35 Ill. Adm. Code 104.204. Specifically, regarding the requirement in Section 104.204(f), the petition states that the requirement for a compliance plan is not applicable to petitioner. Pet. at 14. The petition further states:

It is undisputed that the results from the KSU [Kansas State University] Efficacy Test completely satisfy Illinois' IET [Initial Efficacy Test] requirements in every way if the Board were to accept the use of a Certified Indicator. Instead, BMTS would rather seek to change the current regulatory requirements. *Id.*

Further, BMTS has requested a variance "for the maximum allowable period under the Board's regulations." Pet. at 18.

The Board has consistently found that a variance request, which includes as the compliance plan an intent to seek a change in the regulation, does not meet the requirements of Section 104.204. *See, e.g., City of Salem v. IEPA*, PCB 98-1 (July 8, 1998) and *Waste Professionals, Inc. v. IEPA*, PCB 97-228 (Sept. 18, 1997). In *Salem*, the Board rejected the variance because the variance did not include a compliance plan. *Salem*, PCB 98-1 slip op. at 3-4. However, in *Waste Professionals*, the Board enunciated an exception to the general rule noting that petitioner was concurrently seeking an adjusted standard that would give permanent relief to the petitioner. *Waste Professionals*, PCB 97-228 slip op. at 7-10, 13-14.

In this instance, BMTS appears to be seeking more permanent relief more generally provided by an adjusted standard under Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1 (2006)). However, even if BMTS is seeking the temporary relief a variance provides, BMTS must provide a compliance plan that indicates how BMTS will comply with the rule of general applicability when the variance expires. Therefore, the Board finds that the petition fails to meet the requirements of 35 Ill. Adm. Code 104.204 and directs BMTS to file an amended petition by August 27, 2007. The filing of an amended petition restarts the Board's decision deadline. *See* 35 Ill. Adm. Code 104.226(a). If BMTS fails to file an amended petition curing the noted deficiencies, the petition will be dismissed.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 26, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board