

ILLINOIS POLLUTION CONTROL BOARD  
November 3, 1983

MIDWEST SOLVENTS COMPANY OF ILLINOIS, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 83-159  
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 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, )  
 ) Respondent. )

DISSENTING OPINION (by J. Anderson):

I dissent because I believe that the use of the provisional variance mechanism in this case was improper in that it renders meaningless the two-staged time limits, of 45 days each, in Section 36(c) of the Act.

Section 36(c) states, in part:

"Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days."

In the Agency Recommendation, p.4, lines 7-10, the Agency states, "Petitioner estimates this construction to take approximately 8 weeks during which time Petitioner estimates its effluent will exceed its BOD and Suspended Solids limitations." (Emphasis added).

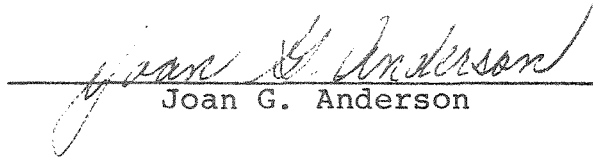
Eight weeks is longer than 45 days. At no point in the Recommendation does the Agency disagree with this eight week time frame. To acknowledge "up front" that the project is likely to exceed 45 days is, in effect, a precommitment to an extension into the second 45 day stage.

The obvious purpose of Section 36(c) is to provide for problems that best estimates show can be remedied within a 45 day time period, with up to 45 more days of "spillover" time for justifiable and unanticipated delays. To argue that the Agency is not precommitting because this variance does not exceed 45 days is to leave the Petitioner "hanging out to dry", since the hardship and environmental impact questions have

already addressed the 8 week time frame. The first 45 day statutory limitation becomes meaningless and the Agency's subsequent review of the second petition for time to complete the project is a pretense.

The statutory language should not be stretched out of shape this way. The provisional variance process bypasses prior public notice, provides no opportunity for public objection or public hearing and escapes the usual Board deliberation of the merits of the hardship and environmental impact issues.

Finally, I fail to understand why a regular variance, with its short decision period, could not have been sought instead. Paragraph 7 on p.3 of the Recommendation indicates that this variance is needed because increased production at the facility is expected "within the next few years." There was no showing in the record that a regular variance proceeding, with its associated public participation mechanisms, could not have been used.

  
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Joan G. Anderson

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 4<sup>th</sup> day of November, 1983.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board