

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1992

OLIN CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-172
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the November 23, 1992 motion to dismiss filed by respondent Illinois Environmental Protection Agency (Agency). On November 30, 1992, petitioner Olin Corporation (Olin) filed its response objecting to dismissal. Respondent seeks dismissal of this variance on the basis that the petition fails to set forth an adequate compliance plan as required by 35 Ill. Adm. Code 104.121(f).

On November 5, 1992, Olin filed a variance petition seeking temporary relief from the volatile organic materials (VOM) emissions limits set forth in 35 Ill. Adm. Code 219.204(j). Olin's Winchester Division manufactures small arms ammunition, ammunition components, and explosives. Nitrocellulose lacquers are used in the manufacturing process and VOMs are emitted as the lacquers dry. Olin asserts that it is currently unable to comply with Section 219.204(j) and has been unable to locate compliant materials which meet required performance criteria, including military specifications.

Section 104.121(f) requires that a variance petition include a "detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program" Respondent contends that Olin's variance petition should be dismissed because it does not include a compliance plan which is specific enough to be considered a compliance schedule.

Olin's petition sets forth a two-phase compliance program. (Pet. at 27; Pet. Exh. 19.) In the first phase, Olin will investigate reformulations of the lacquers. Olin states that it is currently investigating water-based lacquers and shorter-chain nitrocellulose formulations. Olin anticipates that development, testing, and implementation of lacquer reformulations for ammunition will take approximately five years, for power load tools approximately two to three years. Both reformulations would require military specification approval. Olin also estimates the costs of reformulation to be between \$300,000 to \$500,000.

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If reformulation proves technically or economically infeasible, Olin will proceed to investigate capture and control technology. Olin has begun a preliminary investigation in this technology and, in the event that it proves to be economically infeasible, Olin may seek an adjusted standard.

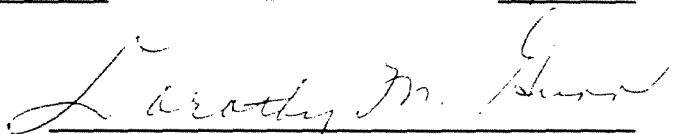
Exhibit 19 attached to Olin's petition sets forth a time schedule for each phase of compliance. Olin states that this schedule is reasonably anticipated to achieve compliance within five years. In summary, Olin states that "[i]f a reformulated lacquer 'fails' a performance test, other reformulations are unavailable, and an adjusted standard has not been granted, Olin will then proceed to in depth evaluation of the design implementation of capture and control devices."

Because a variance is a temporary reprieve from compliance, petitioner must commit to a plan reasonably calculated to achieve compliance within the term of the variance. (Monsanto Co. v. PCB (1977), 67 Ill. 2d 276, 376 N.E.2d 684; Olin Corp. v. IEPA (Feb. 7, 1991), PCB 89-72 at 5.) The Board finds that Olin's petition sets forth a sufficient compliance plan which is reasonably calculated to achieve compliance within the five-year term requested. Furthermore, the Board agrees with the Agency's assertion that a petition for adjusted standard does not in and of itself constitute an adequate compliance plan. However, Olin mentions an adjusted standard as one possible method of compliance and does not rely solely on such relief for achieving compliance. Consequently, the Board finds that reference to a future adjusted standard does not render Olin's compliance plan inadequate.

For the foregoing reasons, the Board denies respondent's motion to dismiss. In its motion, respondent asks that, if its motion to dismiss is denied, it be given an additional 30 days in which to file its recommendation. On December 3, 1992, Olin filed a waiver of the Board's decision deadline and agreed to the Agency's request for a 30 day extension of time. Therefore, respondent is hereby granted a 30 day extension of time to file its recommendation.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of December, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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