

ILLINOIS POLLUTION CONTROL BOARD
June 14, 1971

TROJAN-U.S. POWDER DIVISION)
)
)
 v.) ## 71-57
) 71-58
)
 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

These are two related variance petitions in which Trojan seeks permission to burn explosive wastes at two sites in southern Illinois and to continue discharging colored effluent into the water at one of them. We grant the burning variances only, and only in very limited part, and not in the terms on which they are requested.

71-57 concerns the company's plant near Marion, which is about to cease operation. There is an accumulation of paper and other materials contaminated with explosives that Trojan says cannot safely be disposed of without open burning. (R. 24, 74, 112). Emissions from the last such activity there were described as consisting of light smoke, with some gaseous contaminants, for a few hours (R. 30, 33-34, 69). There is a similar request for the Wolf Lake plant, which is to continue operation, in # 71-58.

In past cases we have often granted such requests in order to avoid safety problems, in light of the relatively harmless emissions resulting, if the activity is properly conducted and in the right place. The Agency calls attention to our recent decision in # 71-7, Olin Corp. v. EPA (March 3, 1971) in which the petitioner alleged that within less than a year it would be in a position to dispose of contaminated waste apparently similar to that in the present case in a modified incineration (EPA Ex. A, p. 3, Recommendation, p. 3). Olin's statement is enough to deflate Trojan's argument that no alternative means is available, given a little time to buy equipment. We urge the Agency in future, however, to recognize its responsibility for presenting its factual material in evidentiary form so as to permit cross-examination and to file its recommendation long enough before the hearing to allow the petitioner to prepare its responses.

In the Wolf Lake case, therefore, while we shall not deny the variance altogether and require the closing or explosion of the plant, we shall allow the company only a limited time, under bond, in which to come up with a firm program for alternative disposal. Four months will suffice, if further time is needed to implement that program, Trojan may request an extension, but a showing of diligence and progress will be required. The burning site at Wolf Lake appears adequate; it is 2300 feet from the nearest house, and there have been no complaints. (R. 11, 18).

On the issue of the final burning of the Marion wastes the Board is divided. Mr. Lawton and I have expressed our views on this question in a separate concurring opinion. The majority of the Board feels that a last burning of explosive contaminated wastes should be allowed at the Marion site because of the testimony in the record that the transportation of these wastes to another site for open burning would create an unneeded hazardous condition. Based upon the testimony in the record that Trojan has burned almost a year's waste in four hours on May 4 of this year, it would seem that the remaining contaminated wastes would certainly not take longer to burn than that, and perhaps take even less time. For this short period of time for burning, the majority of the Board does not feel that an unnecessary hazard should be undertaken. The harm, if any, from the contaminants which will result from this one allowable burning will indeed be minimal as compared to the risk in moving the contaminated explosive wastes to another site for open burning.

However, the company promises to cease its "Torpex" process by no later than July 1 (actually sooner, see below) and to cease all other manufacturing operations at Marion within a week or so thereafter (R. 51, 56). Because of the short time of operation remaining we shall not require Trojan to pursue alternative methods for disposal at Marion, but Trojan shall not burn in the wildlife refuge. It may transport the waste the 46 miles to Wolf Lake for disposal, or it may select another site satisfactory to the EPA. Permission to burn Marion wastes shall cease August 1, to allow time for cleanup after the plant closes.

It is with considerable displeasure that we note that the company, less than ten days before the hearing, went right ahead and burned nearly a year's accumulation of explosive waste within the refuge (R. 25, 61), without waiting for our decision, obtaining the refuge manager's assent by leading him to believe a variance was in effect (R. 157, 163). Of course anyone is free to take his chances as to whether his conduct will be a violation of the Act, and unreasonable hardship is a defense to enforcement. But, as we hold today, the hardship in this case does not and did not justify burning in a wildlife refuge. An enforcement proceeding would be entirely in order.

Trojan also asks our "approval," until July 1, of the existing system for wastewater disposal at Marion. Water is used, among other things, to melt certain explosive raw materials in the "torpex" process (R. 38); yellow or red dye-like matter (containing carbon; hydrogen, oxygen, and nitrogen (R. 82)) from the explosive finds its way into the water, up to 4000 gpd of which goes into a ditch and thence to Crab Orchard Lake (R. 39-41). The ditch is often discolored, the effluent has been traced into the lake (R. 41), and there have been complaints (R. 164). Company tests showed insignificant BOD and suspended solids in the ditch (R. 125, 129). The Agency's analysis of the effluent itself showed enormous concentrations of both COD (520 mg/l) and suspended solids (590 mg/l).

The company protests that it is not seeking a variance for its liquid waste (R. 7), presumably because it does not wish to concede a violation. It need not so concede to seek a variance; it suffices that the company asks that any violation that may occur, if there is one, be allowed.

We read Trojan as asking for a variance, and we deny it. Such a gross discharge cannot be allowed, in a game refuge, of all places, without even the benefit of a primary settling tank, (R. 98). The petition was amended at the hearing (R. 56, 116) to request approval of the discharge only until July 1, when the torpex process is to be abandoned. But the testimony is that torpex manufacture was slated to stop in fact by the end of May except for "odds and ends of material that might be worked into produce after that during a short period. (R. 112-113). Thus there should be no great need to discharge colored or otherwise objectionable effluent as of the present time. Any "odds and ends" remaining can be dealt with at another plant. Discharges shall cease now.

There were also allegations in the Wolf Lake petition regarding other pollution problems at that plant, but they were inadequate to support a variance request and were withdrawn at the hearing (R. 3). Nothing in today's decision in any way forecloses consideration of any such issues in future proceedings.

This opinion constitutes the Board's findings of fact and conclusions of law.

Mr. Currie and Mr. Lawton dissent in part for reasons stated in the concurring opinion.

ORDER

1. The request for a variance to permit the discharge of colored effluent at Marion is denied.
2. Trojan may burn explosive wastes from its Marion plant until August 1, 1971. Such burning shall not be done in such a place or manner as to cause a nuisance. No smoky materials shall be used to light the fire. A report shall be filed no later than August 9, 1971, indicating the times and quantities of burning and that the plant has been closed and all burning ended.
3. Trojan may burn explosive wastes from its Wolf Lake plant until October 9, 1971, but only on the following conditions:
 - (a) burning shall take place at the Wolf Lake burning site as described in the record;
 - (b) burning shall not be done in such a manner as to cause a nuisance;
 - (c) no more than 100 pounds of waste shall be burned in any one day (R. 18);
 - (d) no smoky materials shall be used to ignite the fire;
 - (e) monthly reports shall be submitted to the Agency and to the Board detailing the dates and times of burning and the nature and amounts of wastes burned;
 - (f) Trojan shall submit to the Agency and the Board, no later than August 9, 1971, a firm program for alternative disposal of explosive wastes, in the form of a petition for extension of this variance;
 - (g) Trojan shall post with the Agency by July 9, 1971 a bond or other security in the amount of \$10,000, which shall be forfeited if any condition of this order is not met.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion this 14th day of June, 1971.

