

The remaining alternative employed by Petitioner, whereby pellets are made by chip compaction, has proven satisfactory, and petitioner is optimistic that within the six-month period requested by this variance proceeding, it will have a satisfactory compaction program developed which will allow for the melting of pellets without the need for burning of magnesium chips. In the meantime, it intends to pursue the other alternatives considered, but believes that the compaction method will be the most likely to achieve results.

The Agency recommends that the variance be denied believing that petitioner has not made the degree of progress in this respect that it should have by this time. However, we note that in cases of this sort and comparable cases involving disposal of explosive wastes, the state of the arts is still in a highly developmental stage and we do not believe any useful purpose is served by insisting on immediate compliance with open burning regulations where the attributes of danger are obvious. See Environmental Protection Agency v. Olin Corporation, East Alton, Illinois, #70-11; and Olin Corporation v. Environmental Protection Agency, #70-25. Petitioner appears to have pursued a variety of alternative means of disposing of its magnesium chips and is embarking on a specific program that gives cause for optimism. We do not believe that under the circumstances, the variance should be denied. Clearly, the hardship on petitioner in demanding immediate compliance with the regulations is disproportionate with any benefit to the public in denying the allowance. Nothing in this or the former proceeding indicates that any burdens have been created upon adjacent properties or residents in the neighborhood.

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

IT IS THE ORDER of the Pollution Control Board that variance previously granted in Case #71-66 be extended to June 23, 1972, during which time petitioner may burn magnesium waste in the open, subject to all terms and conditions set forth in the original order of variance, #71-66.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 7th day of March, 1972, by a vote of 4-0.


