

ILLINOIS POLLUTION CONTROL BOARD

November 18, 1999

THE ENSIGN-BICKFORD COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 00-24
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

This matter is before the Board pursuant to a petition for variance (petition) filed by the Ensign-Bickford Company (EBCO) on August 11, 1999. Pursuant to the Illinois Environmental Protection Act (Act), the Board is charged with the responsibility of granting variances from Board regulations whenever immediate compliance with Board regulations would impose an arbitrary or unreasonable hardship on the petitioner. 415 ILCS 5/35(a). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f). The Agency is also charged with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a).

EBCO is seeking a variance which will allow it to open burn certain explosive wastes pursuant to 35 Ill. Adm. Code 237.103. Pet. at 1.¹ EBCO has waived its right to a hearing in this matter, and no hearing is required pursuant to the Board's rules. Pet. at 10; 35 Ill. Adm. Code 104.124 and 104.160(c). On October 26, 1999, the Illinois Environmental Protection Agency (Agency) filed its recommendation in response to the petition. The Agency recommends that the Board grant the petition subject to certain conditions. Rec. at 1. On November 9, 1999, EBCO filed a "Motion for Leave to File Response *Instante* (sic)" and "Ensign-Bickford Company's Response to Illinois EPA's Recommendation" (response). The Board grants EBCO's motion for leave to file response *instante*.

In a variance proceeding, the burden is on the petitioner to present proof that immediate compliance with Board regulations would cause an arbitrary or unreasonable hardship which outweighs public interest in compliance with the regulations. Willowbrook Motel v. IPCB, 135 Ill. App. 3d 343, 349, 350, 481 N.E.2d 1032, 1036, 1037 (1st Dist. 1977). Pursuant to Section 35(a) of the Act, the Board finds that EBCO has presented adequate proof that immediate compliance with the Board

¹ The petition for variance will be cited as "Pet. at .", the Agency's recommendation will be cited as "Rec. at .", and the response will be cited as "Res. at ."

regulations for which relief is being requested would impose such a hardship. 415 ILCS 5/35(a) (1998). However, EBCO has not demonstrated to the Board that this variance should begin retroactively - on August 10, 1999. The variance herein will begin as of the date of this order. Furthermore, the Board will not grant the variance for the requested five years but instead will grant it for two years. The Board notes that it may grant EBCO's concurrently-filed adjusted standard (*In re: The Ensign-Bickford Company*, AS 00-5) prior to the two-year deadline, thus superseding the variance herein. EBCO's requested variance relief is therefore granted in part and denied in part, subject to the conditions specified at the end of this order.

BACKGROUND

The Facility

EBCO operates a 456-acre explosive products manufacturing facility, which is located near the town of Wolf Lake, Union County, Illinois. The facility borders the Shawnee National Forest, Wolf Lake, and farmland. Pet. at 3-4; Rec. at 2. The facility is situated approximately one-half hour equidistant from Carbondale, Illinois and Cape Girardeau, Missouri. The town of Wolf Lake has a population of approximately 250 persons, and the nearest residence is approximately one-half mile from the EBCO facility. EBCO is the largest manufacturing employer in Union County and has approximately 250 employees. Pet. at 4.

During the manufacturing process for the explosives, EBCO generates waste explosives, namely off-specification product and a variety of explosive-contaminated wastes including packaging materials, wastewater treatment sludge, spent activated carbon, and solvent from laboratory and maintenance procedures. Pet. at 3-4; Rec. at 2-3.

Prior Variances

EBCO has previously received several variances from the Board. In 1989, the Board first granted EBCO and the Trojan Corporation (both wholly-owned subsidiaries of Ensign-Bickford Industries) a variance authorizing them to open burn explosive waste for a period of five years. EBCO and Trojan Corp. v. IEPA (August 10, 1989), PCB 88-156 and PCB 88-168. In August 1991, the Board modified the 1989 variance, thereby allowing EBCO and Trojan Corp. to combine their open burning limitations and also allowing a greater amount of explosive waste to be burned. EBCO v. IEPA (August 22, 1991), PCB 90-242. In September 1991, the Board again modified the 1989 variance, allowing EBCO to flash metallic process equipment and open burn wooden process equipment for one year. EBCO and Trojan Corp. v. IEPA (September 26, 1991), PCB 91-96.

With the instant petition, EBCO seeks to extend its most recent variance that the Board granted in 1994 which allowed EBCO to open burn its explosive wastes until August 10, 1999. The 1994 variance provided for an increase in the total amount of wastes to be burned over the previous variances, and it also combined limits on burning certain types of materials. EBCO v. IEPA (September 1, 1994), PCB 93-139.

The Board has also granted provisional variances to EBCO. In 1990, the Board granted EBCO a 45-day provisional variance to allow the open burning of two wooden buildings contaminated with explosive material that were decommissioned as the facility was modernized. EBCO v. IEPA (August 26, 1990), PCB 90-83. On November 4, 1999, the Board granted EBCO a provisional variance to allow open burning pursuant to the terms set forth in PCB 93-139 with the exception of flash burning equipment potentially contaminated with explosive waste. EBCO v. IEPA (November 4, 1999), PCB 00-78. Provisional variance PCB 00-78 expires December 10, 1999.

As of January 1, 1996, Trojan Corp. merged with EBCO. EBCO is the successor corporation. Pet. at 3.

MOTION FOR INCORPORATION

Pursuant to 35 Ill. Adm. Code 104.123(a), EBCO requests that the record in addition to the opinion and order from PCB 93-139 be incorporated into the instant petition in lieu of resubmitting those documents. Pet. at 1-2. The Board grants the request.

THE REQUESTED VARIANCE, AGENCY RECOMMENDATION, AND RESPONSE

EBCO's instant petition seeks relief from Section 237.102 of the Board's rules pursuant to Section 237.103. Section 237.102 prohibits open burning, but Section 237.103 allows open burning of explosive wastes only if such burning is allowed by a variance. 35 Ill. Adm. Code 237.102, 237.103; Pet. at 1; Rec. at 4. The Agency does not have authority to issue permits for open burning of explosive wastes. Rec. at 4.

In the instant petition, EBCO is seeking an extension of its PCB 93-139 variance with modifications. EBCO seeks to burn explosive waste, burn potentially explosive-contaminated wastes including some of its buildings, and flash burn equipment potentially containing residues of explosive materials.

EBCO plans to decommission six of its buildings which are all potentially contaminated with explosive materials. The buildings contain wood, concrete, brick, and various metals including steel.

The equipment to be flashed will either be modified, replaced, or maintained. Pet. at 4-6. Flashing is a method to thermally sanitize equipment that may contain residues of potentially explosive materials. See EBCO and Trojan Corp. v. IEPA, PCB 91-96, slip op. at 1.

Waste Categories

The current variance in PC 93-139 limits EBCO's open burning as follows:

Materials to start fires	100 lbs/week
Explosive-contaminated materials	5,000 lbs/week
Pyrotechnic materials	50 lbs/week
Combined trinitrotoluene (TNT) and pentaerythritol	tetranitrate

(PETN) waste	1,000 lbs/week	Pentolite waste
50 lbs/week	Composition B waste	
150 lbs/week		

EBCO has been able to eliminate open burning of three small-scale waste streams: shipments of explosive-contaminated solvents and rags, and shipments of pyrotechnic explosive configured devices. Pet. at 2. EBCO is now sending its solvents and rags to off-site treatment, storage, and disposal facilities. Pyrotechnic materials are also shipped off-site for disposal, and, as a result, the total amount of wastes to be burned will decrease by 50 lbs/week. Pet. at 4-5, 7.

In the instant petition, EBCO seeks to consolidate the limits for its non-metallic explosive wastes which include TNT and/or PETN, Composite B, and Pentolite. EBCO asserts that consolidation does not increase the amount of open burning but instead provides flexibility for EBCO without environmental or safety concerns, much like the PCB 93-139 variance allowed EBCO more flexibility. EBCO's instant petition schedule for open burning is as follows:

Materials to start fires	100 lbs/week
Explosive-contaminated materials	5,000 lbs/week
Non-metallic explosive wastes ²	1,200 lbs/week

Pet. at 4-5.

In its recommendation, the Agency approves of the schedule above. The Agency notes that it has studied EBCO's quarterly reports submitted under the PCB 93-139 variance. See Rec. at Exh. B. The reports reveal that EBCO has never burned the full amount of wastes allowed by the PCB 93-139 variance.

Expiration Dates

In addition to the instant variance petition, EBCO has also filed an adjusted standard petition. See docket AS 00-5. EBCO's adjusted standard petition addresses every aspect of the instant variance petition except for the burning and flashing of the explosive-contaminated buildings. Pet. at 2.

In the instant petition, EBCO requests that the variance be extended until either: (1) the Board grants EBCO's adjusted standard petition (AS 00-5) currently pending before the Board or (2) August 10, 2004, which is five years from the expiration of EBCO's PCB 93-139 variance. Additionally, EBCO requests that the Board extend its current variance for open burning of buildings until August 10, 2004. EBCO does not include the buildings as a part of its adjusted standard petition. Pet. at 2, 5, 6.

² EBCO states that the non-metallic explosive wastes category includes tritonal (aluminized TNT) which contains small amounts of aluminum. Res. at 3-4.

The Agency states that there will be a “diminished incentive” for the parties to resolve the concurrently-filed adjusted standard if EBCO receives another five year variance. Therefore, the Agency recommends that the Board grant EBCO a one-year variance suggesting that this will give the parties time to resolve the concurrently-filed adjusted standard petition. Rec. at 5.

The Agency points out that EBCO has provided no schedule for the open burning and flashing of the six buildings. The Agency recommends that a two-year period will be sufficient to allow for the burning of the buildings, considering that EBCO has not included the buildings in its adjusted standard petition. Rec. at 5-6.

In its response, EBCO agrees with the Agency regarding the two-year time period for the flashing and burning of the six explosive-contaminated buildings. However, EBCO argues that the Agency’s one-year proposal for the explosive waste and explosive-contaminated waste and equipment is too short. EBCO claims that it is possible that the concurrently-filed adjusted standard (AS 00-5) may not be granted within a year. If this were to happen, EBCO would have to file yet another variance petition. Accordingly, EBCO asks that the Board grant it a two year variance for burning and flashing all of its wastes including the six buildings Res. at 5-6.

Retroactive Relief

EBCO requests that the Board grant the variance retroactive from August 10, 1999, the day on which the variance in PCB 93-139 expired. EBCO states that it filed the instant petition on the day that the variance expired because it wanted to ensure that the open burning provisions in its draft Resource Conservation and Recovery Act (RCRA) Part B permit were consistent with its variance petition. The comment period for the permit expired on June 14, 1999. Pet. at 10. The Agency, citing several other prior variances, recommends that the Board should not grant a retroactive variance but should instead grant EBCO prospective relief. The Agency acknowledges that the variance in PCB 93-139 was granted retroactive to the expiration date of the prior variance, but that EBCO’s petition for PCB 93-139 was filed over a year before the expiration date. On the other hand, the Agency points out that here EBCO filed the instant petition on August 11, 1999, a day after the PCB 93-139 variance expiration date. The Agency recognizes EBCO’s reasoning regarding the RCRA Part B permit, but does not accept that EBCO waited almost two more months to file the instant petition. Rec. at 6-7.

Other Conditions

The Agency is concerned that EBCO has not provided enough information regarding flashing, namely the quantity of the materials to be flashed, the emissions from flashing, or the frequency of flashing. Therefore, the Agency recommends that EBCO notify the Agency prior to open burning or flashing of any buildings or equipment. Rec. at 6.

The Agency proposes that EBCO should place a wire mesh screen over the materials to be flashed. Rec. at 18. EBCO objects, claiming that the wire mesh screen requirement is neither

practicable nor feasible. EBCO claims that the screen burns away during flashing and therefore serves no useful purpose. Res. at 5.

One of the conditions in the PCB 93-139 variance states that “Petitioner shall weigh and record all materials to be burned.” EBCO v. IEPA (September 1, 1994), PCB 93-139, slip op. at 6. The Agency proposes changing the condition for the instant variance: “Petitioner shall weigh and record the weight, description, and contaminants contained in all materials to be burned.” Rec. at 16. EBCO objects, claiming that it is not able to weigh each contaminant in its explosive-contaminated packaging material. Res. at 3.

For the instant variance, the Agency proposes that “Petitioner shall remove the roofing materials . . . prior to burning the structures.” Rec. at 17. EBCO claims that this condition is modified from a prior variance where removal of roofing was specified for certain buildings. Res. at 4; EBCO v. IEPA (September 1, 1994), PCB 93-139, slip op. at 7. For the instant variance, EBCO says that different buildings must be flashed prior to demolition and that there is a risk of detonation if EBCO is forced to remove roofs. In addition, if roof removal is required, workers who go on top of the buildings could be at risk because several of the buildings are aging and not in good condition. Workers may also be at risk resulting from sparks during removal. Res. at 4.

COMPLIANCE WITH FEDERAL LAW

In accordance with Section 35 of the Act, the Board may grant variances only where they are consistent with federal law. 415 ILCS 5/35 (1998). Sections 237.102 and 237.103 of the Board’s rules are not part of the Illinois State Implementation Plan (SIP) for achieving the National Ambient Air Quality Standards (NAAQS). The Board’s rules at issue are not required by federal law. Thus, the Agency acknowledges that granting the variance is consistent with federal law. Rec. at 14. Furthermore, EBCO stresses that open burning of explosive waste material is allowed by its draft RCRA Part B permit. EBCO expects that the permit will be adopted without any substantive changes. Pet. at 8-9.

ENVIRONMENTAL IMPACT

When deciding to grant or deny a variance petition, the Board is required to balance the petitioner’s hardship in complying with Board regulations against the impact that the requested variance will have on the environment. Monsanto Co. v. IPCB, 67 Ill. 2d 276, 292, 367 N.E.2d 684, 691 (1977).

EBCO’s facility is in a rural area that is in attainment for the NAAQS for all criteria pollutants. Rec. at 10. The nearest monitoring station, which is located 20 miles northeast of Wolf Lake in Carbondale, only measures total suspended particulates (TSP). There have been no exceedences of TSP in Union County over the past three years. Pet. at 6; Rec. at 10. EBCO also believes that emissions data from its previous variance petitions shows that the open burning at its facility will not cause violations of the applicable NAAQS. *Id.* The Agency agrees with this analysis. It also points out

that the pyrotechnic materials (which will no longer be open burned) were its biggest environmental concern. Pet. at 10.

EBCO states that it will take “sufficient precautionary measures” to minimize the emission of air contaminants and control the open burning so that it is done safely. Pet. at 7. The Agency states that the inherent dangerous nature of the materials outweighs the “unquantifiable amount of environmental harm” from open burning. Rec. at 11.

HARDSHIP

In consideration of a variance, the Board is required, pursuant to Section 35(a) of the Act, to determine whether the petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to comply with the Board's regulation at issue. 415 ILCS 5/35(a) (1998). In order to comply with the Board's regulations at 35 Ill. Adm. Code 237.102 and 237.103, EBCO would have to find alternative means to legally dispose of its wastes.

In several of the previous variances granted to EBCO and Trojan Corp., the Board has held that EBCO and Trojan Corp. should have continually investigated new technology to provide for an economically feasible and technically reasonable alternative to open burning. EBCO and Trojan Corp. v. IEPA (August 10, 1989), PCB 88-156 and PCB 88-168, slip op. at 7; EBCO and Trojan Corp. v. IEPA (August 22, 1991), PCB 90-242, slip. op at 4; EBCO v. IEPA (September 1, 1994), PCB 93-139, slip op. at 6.

In the instant petition, EBCO claims that it has continued to investigate alternatives to open burning. EBCO points to the waste streams that it now ships off-site for treatment as an example. Pet. at 2, 4, 5, 7. However, EBCO claims that, at the present time, no alternatives to open burning exist that are economically feasible and technically reasonable for its remaining open-burned wastes. Pet. at 2, 7. EBCO has investigated sending its bulk shipment wastes to off-site facilities, but there are safety risks associated with large scale transportation that are not inherent for the small quantity waste streams which EBCO now sends off-site.

EBCO notes that it has also evaluated the possibility of using chemical treatment methods but found that available technologies would produce a greater volume of hazardous waste that would still need to be treated, stored, or disposed. Pet. at 8.

EBCO has determined that a new technology known as thermal destruction by controlled incineration for its bulk wastes is a safe, clean, and efficient alternative to open burning. However, this method was rejected because, until recently, Illinois had banned construction of new hazardous waste incinerators. Pet. at 7. Now that the ban has been lifted, the Agency points out that EBCO has not reevaluated on-site incineration. Rec. at 12. The Agency also notes that EBCO's instant petition is silent regarding the long-term feasibility of on-site incineration. The Agency claims that this weighs in favor of a shorter term for the variance. Rec. at 8.

Recently, EBCO notes that it has not pursued incineration because the explosives industry has focused on new technologies. Pet. at 7-8. EBCO claims that the existence of new alternatives is a reason not to build its own on-site incinerator. Pet. at 8. The potentially viable alternatives include Solvated Electron Technology and Plasma Arc Technology. EBCO claims that the alternatives are not yet economically feasible or technically reasonable because they are “unknown, unproven, (and) highly complicated”. Pet. at 8, 9. The Agency admits that the new alternatives may impose an undue hardship in the short term, but states that EBCO’s instant petition does not provide enough detail on long term investments in the new alternatives. Rec. at 13.

In general, although the Agency recognizes EBCO’s efforts to investigate technically feasible alternative methods of disposal other than open burning, the Agency states that EBCO has not provided enough financial information on those alternatives. Rec. at 12.

EBCO is not aware of any alternative disposal option for the buildings that it wishes to burn. Pet. at 9. The Agency accepts EBCO’s conclusion here. Rec. at 13-14.

DISCUSSION

Waste Categories

The Board notes that EBCO nearly always exceeded its Pentolite waste limit during the prior variance, but that it was well under all of the other limits. By combining Pentolite with other non-metallic explosive wastes into one category, the Board finds that the variance granted herein will more accurately reflect the amount of the waste being burned.

Expiration Dates

Section 36(b) of the Act states that a “variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown.” 415 ILCS 5/36(b) (1998). EBCO first filed a petition for a variance from the Board’s open burning rules in 1989, and the variance was subsequently extended and expanded in scope. The most recent variance extension was in 1994 for a period of five years. See EBCO v. IEPA (September 1, 1994), PCB 93-139, slip op. at 8. The Board has approved other variance extensions for a period longer than a year. See Village of North Aurora v. IEPA (April 20, 1995), PCB 95-42; City of Springfield v. IEPA (December 16, 1993), PCB 93-135; Department of the Army v. IEPA (October 1, 1992), PCB 92-107.

In the instant variance, the Board finds EBCO’s request for a two-year variance for both the flashing and burning of all wastes, including the six buildings, to be compelling. The process for the adjusted standard could exceed one year if there are extensions of time or other procedural delays. If the Board only grants a one year variance here, it might be necessary for EBCO to file yet another variance petition next year.

The Board notes that if it is able to rule on the concurrently-filed adjusted standard (AS 00-5) within a year of this variance, then there will be no conflict with the provisions in Section 36(b) of the Act.

Retroactive Relief

Although the Board has granted retroactive relief in other variances, it usually does so only in special or extraordinary circumstances. J.M. Sweeney Co. v. IEPA (December 19, 1996), PCB 96-184, slip op. at 7; White Cap, Inc. v. IEPA (November 7, 1996), PCB 96-191, slip op. at 8; Marathon Oil Co. v. IEPA (May 16, 1996), 95-150, slip op. at 10-11; North Shore Sanitary District v. IEPA (December 17, 1992), PCB 92-92, slip op. at 4; DMI, Inc. v. IEPA (December 19, 1991), PCB 90-227, slip op. at 6, 7. The Board usually considers variances effective on the date of the Board order. If a petitioner wishes a variance to begin on a certain date, then the petition must be filed at least 120 days prior to that date. Generally, the Board has 120 days to consider a variance petition from the time that it is filed. 415 ILCS 5/38(a) (1998); J.M. Sweeney Co. v. IEPA, PCB 96-184, slip op. at 7 quoting DMI Inc., PCB 90-227, slip op. at 5. The Board adheres to this policy in order to discourage untimely filed petitions. J.M. Sweeney Co. v. IEPA, PCB 96-184, slip op. at 7; White Cap, Inc. v. IEPA, PCB 96-191, slip op. at 8; Marathon Oil Co., PCB 95-150, slip op. at 10.

The Supreme Court has held that “the Board can provide relief from the hardship of immediate compliance and yet retain control over a polluter’s future conduct by granting a temporary variance.” Monsanto Co., 67 Ill. 2d at 288, 367 N.E.2d at 689. However, a retroactive variance eliminates the Board’s ability to control the petitioner’s activity during the retroactive period. Marathon Oil Co., (PCB 95-150), slip op. at 10.

The Board will not apply retroactive starting dates for variances where the petitioner has filed late and the delay was the petitioner’s fault. Marathon Oil Co., PCB 95-150, slip op. at 12. Another reason for not applying a retroactive starting date is if the petitioner’s hardship is self-imposed as a result of the petitioner’s inactivity or faulty decision-making. Marathon Oil Co., 95-150, slip op. at 10; DMI Inc., PCB 90-227, slip op. at 6.

The Board may grant a retroactive variance if the petitioner has diligently sought relief and has made a good faith effort toward achieving compliance with Board regulations. Marathon Oil Co., PCB 95-150, slip op. at 11-12; Deere & Co. v. IEPA (September 8, 1988), PCB 88-22, slip op. at 4. The Board has also provided retroactive variances where there was a procedural delay that was not the petitioner’s fault or was the result of confusion over federal regulations. Marathon Oil Co., PCB 95-150, slip op. at 11; Allied Signal v. IEPA (November 2, 1989), PCB 88-172, slip op. at 6.

The Board notes that EBCO has diligently sought relief and has made good faith efforts to achieve compliance with the Board’s regulations. EBCO is claiming that it postponed filing the variance in order to ensure that the provisions in its draft RCRA Part B permit were consistent with its variance application. Pet. at 10. The Board has found that seeking related government permits or other government approval is an unusual circumstance and justifies delaying the filing of a variance petition. J.M. Sweeney Co. v. IEPA, PCB 96-184, slip op. at 7; White Cap, Inc. v. IEPA, PCB 96-191, slip

op. at 8-9. However, the expiration of EBCO's RCRA Part B draft permit comment period on June 14, 1999, does not justify EBCO's inactivity in waiting until August 11, 1999 - the day after the expiration of the prior variance - to file the instant petition. The Board will not grant a retroactive variance but will instead grant the variance effective as of the date of this order.

The Board also notes that part of the retroactive relief requested by EBCO in the instant petition is moot. Currently, EBCO may legally open burn its accumulated drums of explosive hazardous waste and potentially-explosive contaminated packaging materials. EBCO's most recent provisional variance allows such open burning pursuant to the terms of its variance in PCB 93-139 for a period of 45 days - from October 27, 1999, to December 10, 1999. EBCO v. IEPA (November 4, 1999), PCB 00-78.

Other Conditions

The Board accepts the Agency's recommendation on notification. EBCO must notify the Agency prior to open burning or flashing any buildings or equipment.

The Board accepts EBCO's argument regarding the use of the wire mesh screen for flashing. The Board finds that the screen would serve no useful purpose and will not require EBCO to use one.

The Board proposes a clarification of the Agency's weighing and recording condition that would not require EBCO to weigh each contaminant. The Board will require EBCO to weigh and record its waste materials to be burned according to the category of the waste, not according to each contaminant. Those categories are materials to start fires, explosive-contaminated materials, and non-metallic explosive wastes including tritonal (aluminized TNT).

The Board accepts EBCO's objection to the Agency's proposed condition that roofing materials be removed prior to burning. The Board will only require EBCO to remove the roof of a building if EBCO determines that such removal is safe.

CONCLUSION

The Board finds that, if the instant variance petition is not granted, EBCO will incur an arbitrary or unreasonable hardship. There are currently no viable alternatives to open burning of the bulk wastes. The open burning will not affect the NAAQS, nor will the burning violate other federal or State laws. The Board will grant EBCO a variance to open burn explosive waste and explosive-contaminated waste, provided that EBCO continue to investigate alternate methods of treatment, storage, and disposal of its explosive wastes and potentially explosive-contaminated wastes. The Board also finds that EBCO is not entitled to a five-year variance, but is instead entitled to a two-year variance pending outcome of the concurrently-filed adjusted standard, AS 00-5. The Board finds that EBCO has not presented evidence of special or extraordinary circumstances sufficient to justify a retroactive variance. The variance will begin on the date of this order.

This order does not relieve EBCO of its responsibility to comply with applicable local emergency open burning restrictions or local emergency bans.

This constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

EBCO is hereby granted a variance from 35 Ill. Adm. Code 237.102 and authorization to open burn explosive waste as permitted by 35 Ill. Adm. Code 237.103, subject to the following conditions:

1. Duration
 - a. This variance shall expire on November 18, 2001, or the effective date of an adjusted standard for petitioner, whichever occurs first.
2. Explosive waste and explosive-contaminated waste.
 - a. Petitioner shall diligently pursue an alternative to open burning its explosive waste and explosive-contaminated waste.
 - b. Petitioner shall submit to the Agency information pertaining to requirement B-1 as soon as such information becomes available.
 - c. At any time during the variance period, the Agency may identify new alternatives to open burning for petitioner to evaluate for technological feasibility and economic reasonableness. The evaluation shall be completed and a report shall be submitted to the Agency in soon as practical after petitioner receives notice of such new alternative.
 - d. Petitioner, upon ascertaining to a reasonable degree of certainty that there exists an alternative to open burning which is technologically and economically feasible, shall implement this alternative to dispose of its explosive waste and explosive-contaminated waste.
 - e. Petitioner shall take reasonable measures to minimize the contamination of materials during manufacturing operations.
 - f. Petitioner shall weigh and record each category of waste materials to be burned. Those categories are materials to start fires, explosive-contaminated materials, and non-metallic explosive wastes including tritonal (aluminized TNT).
 - g. Petitioner shall maintain records with weekly totals, by specific type and weight of waste burned. A compilation of these records shall be submitted on a quarterly basis to the Agency. These records shall be available for Agency inspection at all times when petitioner is in operation.
 - h. The report in paragraph g should be addressed to:

Mr. John Justice, Regional Manager
Bureau of Air
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, IL 62234

- i. Open burning shall take place on calm, clear days during daylight hours on which wind velocity is greater than two miles per hour but less than ten miles per hour.
- j. Petitioner shall use cages to burn explosive-contaminated materials so that the dispersement of ash is minimal. Petitioner shall maintain the cages so that the design function and efficiency of the cages are not substantially altered from the cages as built.
- k. Petitioner shall promptly clean up and dispose of any ash after every burn in accordance with all RCRA requirements.
- l. Petitioner shall use a concrete pad for open burning of K044 and K045 sludges to prevent residual waste and waste constituents from contacting surface soils.
- m. Petitioner shall comply with all RCRA and Occupational Health and Safety (OSHA) requirements.
- n. Petitioner shall have fire prevention plans and equipment ready and in place at the facility prior to the first burn.
- o. Open burning shall at all times be supervised. Petitioner shall train its employees in the proper procedures to be followed regarding the open burning. Additionally, training manuals delineating the procedures shall be readily available to employees and Agency inspectors.
- p. Petitioner shall fence off the entire burn area prior to the first burn.
- q. Petitioner shall notify the surrounding community, prior to the first burn, that there will be periodic open burning. A copy of the notification shall be sent to the Agency.
- r. The above-mentioned notification shall include a telephone number for nearby residents to call in the event of any complaints.
- s. Any complaints shall be forwarded to the Agency's Regional Office in Collinsville within twenty-four hours.
- t. Petitioner shall not burn more than the following:

Materials to start fires	100 lbs/week
Explosive-contaminated materials	5,000 lbs/week
Non-metallic explosive wastes, including aluminized TNT	1,200 lbs/week

3. Manufacturing Buildings

- a. Petitioner shall remove the roofing materials prior to burning the structures, unless petitioner determines that such removal is unsafe.
- b. Petitioner shall remove all explosive waste materials from the buildings prior to burning the structures.
- c. Petitioner shall only burn one building per day.
- d. Petitioner shall only burn a building on calm, clear days during daylight hours when the wind velocity is greater than two miles per hour but less than ten miles per hour.
- e. Petitioner shall promptly clear the site of resultant ash after it has burned each building.
- f. Petitioner shall have fire prevention plans and equipment ready and in place at the facility when it burns a building, as described in its August 11, 1999, variance request to the Board. (Pet. at 7.)
- g. Petitioner shall notify the Agency, the local fire department, and the county forestry service of the exact date and time when the proposed burning will occur, at least five business days in advance of when it is intended to occur.
- h. Petitioner shall submit notification pursuant to 40 C.F.R. 61 Subpart M at least 10 working days prior to demolition.

4. Flashing of Contaminated Equipment

- a. The open burning site shall be limited to the smallest necessary space, including areas designated for safety reasons.
- b. Petitioner shall limit the amount of clean fuels to that necessary to flash the equipment of explosives.
- c. Heat-sensitive devices shall be placed in the equipment to be flashed to ensure temperature control.

- d. Petitioner shall comply with requirements 2-i, 2-k, 2-m, 2-n, 2-o, 2-q, 2-r, and 2-s whenever flashing is conducted.
- e. Petitioner shall notify the Agency of the exact date and time when the proposed flashing of equipment will occur at least five business days in advance.

IT IS SO ORDERED.

If petitioner chooses to accept this variance, within 45 days after the date of this opinion and order, petitioner shall execute and forward to:

Deborah J. Williams
of Legal Counsel
Environmental Protection Agency
Grand Avenue East

Division
Illinois
1021 North
P.O. Box 19276
Springfield, IL 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATION

I (We), _____, having read the opinion and order of the Illinois Pollution Control Board, in PCB 00-24, dated November 18, 1999, understand and accept the said opinion and order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

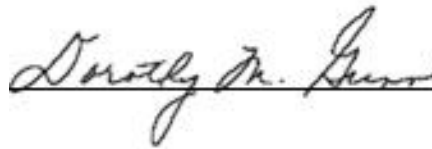
By: Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 18th day of November 1999, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board