



### ANALYSIS

The filing requirements for a variance are set forth at 35 Ill. Adm. Code 104.202. Among those requirements is Section 104.202(a), which states:

Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition. 35 Ill. Adm. Code 202.

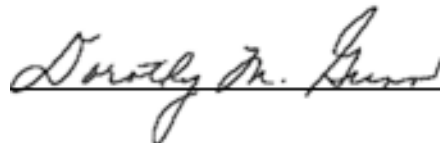
Neither the Environmental Protection Act (Act) 415 ILCS 5 *et seq.* nor the Board's procedural rules address the specific type of relief EBCo seeks.

The Board has previously granted a joint motion to substitute a petitioner and holder for a previously granted adjusted standard, *see e.g. In re Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e)*, AS 96-10 (Mar. 16, 2000). In *Commonwealth Edison* the Board granted a joint motion filed by Commonwealth Edison (ComEd) and Midwest Generation, LLC (Midwest). The Board had previously granted ComEd an adjusted standard from the thermal standards for discharges of cooling water from some of ComEd's generating stations. *Id.* Title to the generating stations was transferred from ComEd to Midwest on December 15, 1999. *Id.* The parties filed the joint motion on February 25, 2000, stating that the operations of the generating stations would not change as a result of the transfer, and the transfer of the facility did not affect the relevant factors that justified the grant of the adjusted standard. *Id.* Additionally, Midwest retained almost the entire workforce previously employed by ComEd. *Id.*

Although EBCo asks that the variance be transferred to Dyno Nobel Inc., Dyno Nobel is not a party to the motion. The Board's procedural rules do not provide for a third party to seek a variance or have a variance transferred on Dyno Nobel's behalf. If in fact the May 3, 2003 closing occurs, consistent with Section 104.202(a), Dyno Nobel may file a variance petition or other appropriate filing concerning this facility. For these reasons, the motion to transfer the variance is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2003, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board