

ILLINOIS POLLUTION CONTROL BOARD

May 29, 1974

OLIN CORPORATION,)
)
 Petitioner,)
)
 vs.)
) PCB 74-28
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

This is a Petition for Variance brought by the Olin Corporation, hereinafter "Petitioner" and filed with the Environmental Protection Agency, hereinafter "Agency" on January 17, 1974. On January 21, 1974, the Illinois Pollution Control Board issued an order requesting additional information and on March 11, 1974, Petitioner filed an Amended Petition with the requested data.

Petitioner has had the problem of disposal of explosive wastes for several years and petitioner has previously been granted successive Variances to make technological innovations in methods of explosive waste disposal. The following are the Variances which Petitioner has held in the past, including a short description of each Variance:

- PCB 70-11 Burning of explosive waste either open
71-7 or under special conditions started in 1967.
73-427
- PCB 72-281 Burning of a building which had some
 explosive possibilities.
- PCB 70-48 Burning permitted of coal with a sulfur
71-347 content greater than 1% in the event of an
 episode.
- PCB 73-427 Permission to open burn primers when
 incinerator is malfunctioning.
- PCB 73-450 Permission to burn high sulfur coal in
 the event of curtailment of natural gas
 supply.

The Operating Permit for the Scrap Shot Shell Incinerator (Ø 212 1309) was issued on March 12, 1973, with an expiration date of March 8, 1975. On August 8, 1973, the same incinerator was issued another Permit reflecting process innovations; this Permit expired on March 31, 1974.

Petitioner's East Alton Plant, Madison County, Illinois, is engaged, among other enterprises, in the business of manufacturing shot shell ammunition and primer explosives. In the process of manufacture, Petitioner generates large amounts of explosive trade waste. Presently, Petitioner disposes the explosive waste in a shot shell incinerator and a rotary popper incinerator. Both of these incinerators are controlled with a scrubber and have been granted Operating Permits by the Agency.

Petitioner seeks a Variance for a period of one year or such lesser time as Petitioner can place into operation one of two alternative compliance plans currently under study.

Petitioner seeks relief from Section 9(a) of the Illinois Environmental Protection Act, [Illinois Revised Statutes, Chapter 111-1/2, Section 1009(a)] and Illinois Pollution Control Board Regulations, Chapter 2, Part II, Rule 203(e).

Petitioner's pyrotechnic destructor is included in the category of ". . . all other incinerators. . ." under Rule 203(e)(3). That Rule allows maximum emissions of 0.2 grains per standard cubic foot of effluent gases corrected to 12 percent carbon dioxide. The effective date of this Rule was December 31, 1973 pursuant to Rule 203(i)(2). According to pages 8a, 8b and 8c of Petitioner's permit application, testing by Industrial Testing Laboratories, Inc. of St. Louis, Missouri indicated calculated emissions from Petitioner's incinerator of 0.672 grains per standard cubic foot of effluent gases corrected to 12 percent carbon dioxide. Therefore, Variance from Rule 203(e)(3) is necessary.

The Agency after an investigation of Petitioner's facility, stated in its "Recommendation" to the Board that:

"Because of the high amount of sub-micron particulate matter being emitted from the present system and the rather large size scrubber needed to control the particulate, Petitioner believes that some of the material must be disposed of by some means other than in the incinerator. Petitioner's representatives indicated that the installation of a 150 horsepower scrubber necessary to control the sub-micron particulates would be cost prohibitive. The Agency specifically reserves comment on this assertion.

Petitioner presently has two possible methods to evaluate in place of the burning of the scrap material. But as yet Petitioner has not selected an alternative." See page 7, Petition for Variance.

"There has been some change in the method of calculating the emissions based on the percent excess air. This change has shown Petitioner's incinerator to be out of compliance with the Board rules, whereas it was previously indicated the existing incinerator was in compliance.

The Agency has received no objection from citizens concerning the granting of this Variance."

WHEREFORE: The Agency asserts that the company has not shown that compliance will be met at the end of the Variance period. The company has not shown that if the Variance were denied that any economic hardship would result.

Accordingly, the Agency recommends that the Variance be denied.

In the alternative, if the Variance should be granted, the Agency recommends that such Variance be granted only from Rule 203(e)(3). The Board should not grant a Variance from either Section 9(a) of the Environmental Protection Act or from Rule 102."

In its argument as to the denial of a Variance of Section 9(a) the Agency cites *People ex rel. Scott v. Janson*, 10 Ill. App. 3rd 787, 295 N.E. 2d 140 (1973).

The court held that where enforcement provisions and sanctions against an alleged polluter are sought under the Environmental Protection Act, a hearing must be had before, and a determination made by, the Pollution Control Board and not the Circuit Court. (This decision is presently pending on appeal). The argument that the Agency advances is that if the Board grants a Variance from Section 9(a) this would foreclose any enforcement action during the length of the Variance.

The Board concurs with the argument of the Agency not only with relation to Section 9(a) but with all cases where the Board issues a Variance to a Section of the Act or to its own rules. This, we believe, is axiomatic. The question is not whether or not the Board's action precludes enforcement but whether or not the Petitioner has met his burden in order to secure a Variance.

We find that the Petitioner has not met that burden with regard to a Variance from Section 9(a). It has failed to show that compliance would be met at the end of the Variance period as well as any economic hardship that might result. We further find that the Petitioner has met its burden with regard to a Variance from Rule 203(e)(3).

Compliance with Rule 203(e) can presently be achieved only by Petitioner's ceasing to use its incinerator's for the disposal of its explosive trade wastes. Because of the safety hazard posed by these wastes, open burning would be the only remaining safe method for their disposal. Obviously, from the public's standpoint, this is not a desirable alternative, and would require a variance to open-burn (this Board has granted a Variance in PCB 73-427 for limited open burning of excess scrap primers to eliminate a particular safety hazard facing Petitioner). Thus, compliance with Rule 203(e) would require that Petitioner accumulate and store these wastes. Such storage would soon constitute an unreasonable and unacceptable safety hazard to plant personnel and property.

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

IT IS THE ORDER of the Pollution Control Board:

1. That the Petitioner's request for a Variance from Section 9(a) of the Illinois Environmental Protection Act, Illinois Revised Statutes, Chapter III-1/2, Section 1009(a) be denied.

2. That the Petitioner's request for a Variance from the Illinois Pollution Control Board Regulations, Chapter 2, Part II, Rule 203(e) be granted for a period of one year from the date of this Order under the following conditions:

a. Petitioner shall post a Performance Bond in the amount of \$50,000 to assure the installation of pollution control equipment which will achieve compliance with the Illinois Environmental Protection Act and the Rules and Regulations of the Board. Said Performance Bond shall be posted with the Agency in a form acceptable to the Agency at the following address:

Illinois Environmental Protection Agency
Fiscal Service Section
2200 Churchill Road
Springfield, Illinois 62706

b. Petitioner shall submit within 60 days from the date of this Order a program designed to achieve compliance with all Rules and Regulations of the Board to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Surveillance Section
2200 Churchill Road
Springfield, Illinois 62706

c. Petitioner shall submit in writing quarterly progress reports to the Agency at the above address.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 29th day of May, 1974 by a vote of 50.

Christan L. Moffett