

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2003

IN THE MATTER OF:)
)
PETITION OF THE) AS 00-5
ENSIGN-BICKFORD COMPANY) (Adjusted Standard – Air)
FOR AN ADJUSTED STANDARD)
FROM 35 ILL. ADM. CODE 237.102)

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by W.A. Marovitz):

This matter is before the Board on a May 23, 2003 motion by Ensign Bickford Company (EBCo) and Dyno Nobel Inc. (Dyno Nobel), to reopen this docket, AS 00-5, and substitute Dyno Nobel as the holder of the adjusted standard.

EBCo states that the Illinois Environmental Protection Agency (Agency) concurs that Dyno Nobel should be named as the holder of the adjusted standard. Mot. at 4. The Agency attorney informed the Board that the Agency did not intend to respond to the motion, and supported the substitution.

For the reasons stated below, the Board grants the motion and names Dyno Nobel Inc. as the holder of the adjusted standard.

BACKGROUND

On June 20, 2002, the Board granted EBCo a variance pursuant to 35 Ill. Adm. Code 237.103, to open burn explosive waste and explosive-contaminated waste at its 456-acre facility near Wolf Lake in Union County. Ensign-Bickford Company v. IEPA, PCB 02-159 (June 20, 2002). On March 20, 2003, the Board granted EBCo an adjusted standard for a term of ten years. In re Petition of the Ensign-Bickford Company for an Adjusted Standard from 35 Ill. Adm. Code 237.102, AS 00-5 (Mar. 20, 2003). The adjusted standard currently takes effect when the variance expires on June 20, 2003. EBCO has also filed motion to substitute Dyno Nobel Inc. for EBCo in the current variance The Ensign-Bickford Company v. IEPA, PCB 02-159 (June 20, 2002). The Board addresses that motion in a separate order today.

In the motion, EBCo and Dyno Nobel state that on May 2, 2003, Dyno Nobel became the new operator of the Wolf Lake facility. Mot. at 2. Dyno Nobel has agreed to assume and be responsible for the obligations and liabilities arising from the operation of the Wolf Lake facility from and after May 2, 2003. Mot. at 2.

EBCo and Dyno Nobel state in the motion that the relevant factors to justify the adjusted standard have not changed. Mot. at 3. Dyno Nobel plans to operate the Wolf Lake facility in substantially the same manner as EBCo has operated it. Mot. at 3. Dyno Nobel has retained Todd Buchanan as the Environmental, Health and Safety manager for the facility. Mot. at 3. Mr. Buchanan previously held the same position with EBCo.

DISCUSSION

The Board's authority for granting an adjusted standard is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)). The Board is charged to “determine, define and implement the environmental control standards applicable in the State of Illinois” (415 ILCS 5/5(b) (2002)), and to “grant . . . an adjusted standard for persons who can justify such an adjustment” (415 ILCS 5/28/1(a) (2002)).

EBCo sought and, after providing sufficient justification, obtained an adjusted standard from 35 Ill. Adm. Code 237.102, subject to conditions for a term of 10 years. Section 237.102 provides:

Section 237.102 states:

- a) No person shall cause or allow open burning, except as provided in this Part.
- b) No person shall cause or allow the burning of any refuse in any chamber or apparatus, unless such chamber or apparatus is designed for the purpose of disposing of the class of refuse being burned.

In the motion presently before the Board, EBCo and Dyno Nobel maintain that the relevant factors that justified the grant of an adjusted standard have not changed. Mot. at 3. Specifically, the factors justifying the adjusted standard involved not the identity of the party that was open burning, but rather “the nature of the facility operations and the resulting waste.” Mot. at 3.

Neither the Act nor the Board's procedural rules address the specific type of relief being sought by these petitioners. However, 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.*

The March 20, 2003 order granted EBCo an adjusted standard to begin on June 20, 2003, when the previously granted variance expires.

CONCLUSION

Based upon the assurances of EBCo and Dyno Nobel that Dyno Nobel intends to operate the Wolf Lake facility in substantially the same manner as EBCO operated the facility, and upon the Board's previous findings of justification in its March 20, 2003 order, the Board reopens this docket and substitutes the name of Dyno Nobel Inc., for Ensign Bickford Company in its March 20, 2003 order. For administrative efficiency, the Board will make the additional change in the order to make the adjusted standard effective today, June 5, 2003, rather than June 20, 2003.

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

ORDER

1. The Board hereby amends its March 20, 2003 order in this matter, and grants to Dyno Nobel Inc. an adjusted standard from 35 Ill. Adm. Code 237.102, subject to the following conditions:
2. The adjusted standard applies to Dyno Nobel's explosive products manufacturing facility located near Wolf Lake, Union County, Illinois.
3. Duration.
 - a. This adjusted standard shall begin on June 5, 2003.
 - b. The adjusted standard shall expire on June 5, 2013.
4. Explosive waste and explosive-contaminated waste.
 - a. Dyno Nobel Inc. must diligently pursue an alternative to open burning its explosive waste and explosive-contaminated waste and submit an annual report to the Agency describing its efforts to locate and develop alternatives and their associated costs.
 - b. At any time during the adjusted standard duration, the Agency may identify new alternatives to open burning for Dyno Nobel to evaluate for technological feasibility and economic reasonableness. The evaluation shall be completed and a report shall be submitted to the Agency as soon as practical after Dyno Nobel Inc. receives notice of such new alternatives.
 - c. Dyno Nobel Inc., 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.

- d. Dyno Nobel Inc. must take reasonable measures to minimize the contamination of materials during manufacturing operations.
- e. Dyno Nobel Inc. must 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).
- f. Dyno Nobel Inc. must maintain records with weekly totals, by specific type and weight of waste burned. A compilation of these records must be submitted on a quarterly basis to the Agency. These records must be available for Agency inspection at all times when Dyno Nobel Inc. is in operation.
- g. The reports in paragraphs 3(a), 3(b) and 3(f) must be addressed to:

Mr. John Justice, Regional Manager
Bureau of Air
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, IL 62234
- h. Open burning must 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.
- i. Dyno Nobel Inc. must use cages to burn explosive-contaminated materials so that the dispersment of ash is minimal. Dyno Nobel Inc. must maintain the cages so that the design function and efficiency of the cages are not substantially altered from the cages as built.
- j. Dyno Nobel Inc. must promptly clean up and dispose of any ash after every burn in accordance with all RCRA requirements.
- k. Dyno Nobel Inc. must use a concrete pad for open burning of K044 and K045 sludges to prevent residual waste and waste constituents from contacting surface soils.
- l. Dyno Nobel Inc. must comply with all applicable RCRA and Occupational Health and Safety (OSHA) requirements.
- m. Dyno Nobel Inc. must have fire prevention plans and equipment ready and in place at the facility prior to the first burn.
- n. Open burning must at all times be supervised. Dyno Nobel Inc. must train its employees in the proper procedures to be followed regarding the open

burning. Additionally, training manuals delineating the procedures must be readily available to employees and Agency inspectors.

- o. Dyno Nobel Inc. must fence off the entire burn area prior to the first burn and the fencing must remain throughout the adjusted standard, when burning or flashing occurs.
- p. Dyno Nobel Inc. must notify the surrounding community, prior to the first burn, that there will be periodic open burning. A copy of the notification must be sent to the Agency at the address in paragraph 2(g).
- q. The above-mentioned notification must include a telephone number indicating that nearby residents or other persons may call in the event of any complaints.
- r. Any complaints must be forwarded to the Agency's Office at the address in paragraph 2(g) within twenty-four hours.
- s. If a complaint is received, Dyno Nobel Inc. and the Agency must evaluate the complaint to determine whether any action can and should be taken by Dyno Nobel Inc. to minimize the effect complained of in subsequent burns.
- t. Dyno Nobel Inc. must not burn more than the following:

Materials to start fires	100 lbs/week
Explosive-contaminated materials	5,000 lbs/week
Non-metallic explosive wastes	1,200 lbs/week
Equipment flashing	as needed
- u. Dyno Nobel Inc. must notify the Agency, the local fire department, and the county forestry service of the date and time when the proposed burning will occur, at least three business days in advance of when it is intended to occur.
- v. Dyno Nobel Inc. is prohibited from accepting waste from other Dyno Nobel Inc. facilities at its Wolf Lake plant for purposes of open burning and flashing.

5. Flashing of Contaminated Equipment

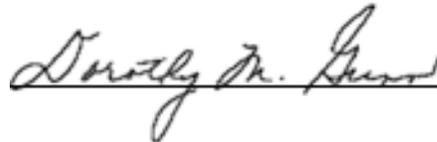
- a. The open burning site must be limited to the smallest necessary space, including areas designated for safety reasons.
- b. Dyno Nobel Inc. must limit the amount of clean fuels to that necessary to be flashed to ensure temperature control.

- c. Heat-sensitive devices must be placed in the equipment to be flashed to ensure temperature control.
- d. Dyno Nobel Inc. must comply with requirements 3-h, 3-j, 3-l, 3-m, 3-n, 3-p, 3-q, 3-r and 3-u whenever flashing is conducted.
- e. In Dyno Nobel Inc.'s annual report on alternatives required in 3(a), Dyno Nobel Inc. must include an evaluation of methods it has investigated to lower emissions generated by flashing.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above supplemental opinion and order on June 5, 2003, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board