

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1983

OLIN CORP.,)
)
 Petitioner,)
)
 v.) PCB 83-123
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On July 28, 1982, Olin Corp. (Olin) filed a request for provisional variance with the Illinois Environmental Protection Agency (Agency). On August 29, 1982 the Agency, pursuant to Sections 35(b) and 37(b) of the Environmental Protection Act (Act), filed its Recommendation with the Board that provisional variance be denied for lack of showing of arbitrary or unreasonable hardship.


This provisional variance request incorporates by reference the petition for "regular" variance from Rule 502 of Chapter 2: Air Pollution pursuant to Section 35(a) of the Act. This petition was received by the Board July 29, 1983 and docketed as PCB 83-102. In PCB 83-102, Olin sought a one-year variance from the open burning rule to allow for test-firing of ammunition into fuel oil tanks in fulfillment of a research and development contract with the Department of the Air Force. Said testing is to be performed at a test range two miles northwest of Marion, Williamson County. The instant, PCB 83-123 provisional variance is requested for "such period of time of the grant or denial of the variance petition from the Board."

The Board notes that, while Section 35(b) requires provisional variances to be "issued within 2 working days of notification from the Agency" that compliance would impose an arbitrary or unreasonable hardship, Section 35(b) does not impose such a deadline for Board action to deny a provisional variance upon Agency recommendation that the Board so do, or an explicit duty on the Board to ratify Agency denials. Without accepting any implicit duty which may exist, the Board will comment upon this case as a companion to PCB 83-102, in which expedited consideration was requested.

The Agency has recommended denial of this petition on the merits. This situation is virtually identical to that in SCA Chemical Services, Inc. v. IEPA, PCB 82-60, May 4, 1982. Without reaching the merits, the Board finds that this provisional variance is improperly before the Board, given the pendency of PCB 83-102, for the reasons outlined at some length in SCA. Rather than repeat these reasons verbatim, the Board will instead direct its Clerk to serve a copy of the SCA Order upon the parties along with this one.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 30th day of August, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board