

ILLINOIS POLLUTION CONTROL BOARD
November 4, 1999

ENSIGN-BICKFORD COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 00-78
)	(Provisional Variance - Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	
)	

ORDER OF THE BOARD (by C.A. Manning):

On November 2, 1999, the Illinois Environmental Protection Agency (Agency) filed a request for provisional variance and notification of recommendation. The Agency recommends that the Board grant a 45-day provisional variance. The provisional variance would allow the petitioner's Union County facility to open burn accumulated drums of explosive hazardous waste and potentially explosive contaminated packaging materials. In making its recommendation, the Agency states that failure to grant the requested provisional variance for 45 days will result in an arbitrary or unreasonable hardship on the petitioner.

In its application to the Agency, the petitioner also requested a provisional variance from 35 Ill. Adm. Code 722.134, which imposes a 90-day limit on accumulating hazardous waste. The Agency recommends, however, that the Board grant a provisional variance only from 35 Ill. Adm. Code 237.102, which prohibits open burning except in certain circumstances. The Agency notes that granting the recommended provisional variance would allow the petitioner to open burn its accumulated hazardous waste before the 90-day deadline and thereby avoid exceeding the time limit of 35 Ill. Adm. Code 722.134. Under these circumstances, it would not be appropriate for the Board to grant a provisional variance from 35 Ill. Adm. Code 722.134.

The Board grants the petitioner a provisional variance from 35 Ill. Adm. Code 237.102. The Board is required, in a provisional variance, to adopt a formal order, assure formal maintenance of the record, assure the enforceability of the variance, and provide notification of the action by press release. Pursuant to Section 35(b) of the Environmental Protection Act (415 ILCS 5/35(b) (1998)), the Board must issue the provisional variance within two days of the filing.

The Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 237.102, beginning on October 27, 1999, and expiring on December 10, 1999, subject to the following conditions:

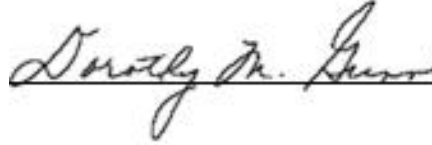
1. The open burning shall be conducted pursuant to the conditions set forth by the Board in Ensign-Bickford Company v. IEPA (September 1, 1994), PCB 93-139;
2. This provisional variance only allows the open burning of the accumulated drums of explosive hazardous waste and potentially explosive contaminated packaging materials; and
3. Petitioner shall not flash equipment potentially contaminated with explosive waste pursuant to this provisional variance.

IT IS SO ORDERED.

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 order was adopted on the 4th day of November 1999 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