

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 1992

OLIN CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-130
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a petition for variance filed by Olin Corporation (Olin) on September 2, 1992. Olin is seeking a variance for a period not to exceed three years from the open burning prohibition of 35 Ill. Adm. Code 237.202. The Illinois Environmental Protection Agency (Agency) filed its recommendation (Agency Rec.) with the Board on October 16, 1992. The Agency recommended that the Board grant Olin's variance subject to various conditions. No hearing was held on this matter and no citizen objections have been received.

Previously, petitioner has received variances from the Board which allowed it to openly burn explosive wastes and allowed operation of explosive waste incinerators. [PCB 71-160 (1971); PCB 71-371 (1972); PCB 71-517 (1973); PCB 79-234 (1980); PCB 81-118 (1982); PCB 83-102 (1983); PCB 84-69 (1984); PCB 85-86 (1985).] The three most recent variances allowed activity similar to that involved in this petition. The proposed activity in this variance differs from that in other similar variances to the extent that Olin intends to use diesel fuel exclusively in its tests and Olin will use different types of ammunition than previously tested.

BACKGROUND

Olin develops and manufactures propellants, pyrotechnic devices, medium caliber ammunition, and gas generator propulsion devices for the U.S. government and foreign governments. (Pet. at 1-2.) Olin's plant which is the subject of this petition is located in a former U.S. Army Ordnance Plant in rural Williamson County, Illinois. (Pet. at 1.) In addition to the manufacturing plant, Olin operates a test range and waste thermal treatment facility on 290 acres of land two miles northwest of the City of Marion, also in Williamson County. It is at this site where the open burning proposed by Olin would take place. (Pet. at 2.)

ISSUE

Olin states that, as part of its contracts with the

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Department of Defense, it is required to test the ammunition that it manufactures by firing rounds, generally one per test, into containers of fuel. (Pet. at 3.) Each test will require five gallons of diesel fuel in the containers. (Pet. at 3.) These tests are intended to represent the conditions of firing what is typically referred to as "medium caliber ammunition" into the fuel tank of an enemy transport vehicle. (Pet. at 2-3.) The ammunition types which will require testing are 25MM SAPHEI-T and 25MM SAPHEI-T-SD. (Pet. at 3.) When a round of ammunition hits the target container, it detonates and causes the fuel to ignite, burn, and/or vaporize causing a violation of Section 237.102. (Pet. at 3.) Olin estimates that approximately 80% of the five gallons of diesel fuel in the container will create a fireball upon impact leaving only 20% to burn out. (Pet. at 3-4.) Finally, Olin estimates that the Government will require no more than 30 tests per development contract. (Pet at 4.)

Olin and the Agency concur that the proposed testing will not significantly impact the air quality of the area around the Olin facility. (Agency Rec. at 4 and Pet. at 5-6.) The Agency, based on Olin testing 30 rounds of ammunition where five gallons of diesel fuel is burned and 31.71 grams of explosives are burned per test, estimates the total emissions from Olin's open burning will be as follows:

<u>Pollutant</u>	<u>Tons\Year</u>
Particulates	0.0002
Sulfur dioxide	0.0032
Carbon monoxide	0.0004
Nitrogen oxides	0.0014

(Agency Rec. at 4.) Olin's figures differ only slightly from the Agency's figures. Olin calculates that 0.0015 tons per year of nitrogen oxides will be emitted through the testing process. (Pet. at Exh. C.) As seen above, the Agency calculates that 0.0014 tons per year of nitrogen oxides will be emitted.

#### AGENCY RECOMMENDATION

As earlier mentioned, the Agency supports the grant of variance. The only contested issue between the Agency and Olin is the specific terms of the variance. Olin requests a three year variance. Olin sites anticipated future government testing needs as the reason for needing a three year variance. (Pet. at 8.) Olin's current testing phase is to end on February 1, 1993. (Pet. at 8.) The Agency recommends that if Olin's contract is not renewed after December 31, 1992, that the variance should be terminated on February 1, 1993. (Agency Rec. at 7.) In addition to recommending an adjusted length of time for the variance, the Agency makes several recommendations regarding the conditions to

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be imposed along with granting the requested variance. (Agency Rec. at 6-9.)

In the past, Mr. Hal Armstrong, a citizen who lives approximately one-half mile from the Olin facility objected to a variance request by Olin on July 12, 1985. (PCB 85-86, (September 20, 1985), at 1.) At the time, the Agency did not find that the objection was related to the ammunition testing. (*Id.*, at 4.) The Agency did however contact Mrs. Armstrong on September 24, 1992 in connection with this variance and she had no complaints. (Agency Rec. at 3.) The Agency also contacted State Senator James F. Rea, Representative Larry Woolard, the Williamson County State's Attorney, and the Chairperson of the Williamson County Board. In addition, the Agency placed legal notice in the appropriate newspaper. As of October 16, 1992, when the Agency filed its recommendation, the Agency had received no citizen complaints or objections to the granting of the variance. (Agency Rec. at 3.)

#### DISCUSSION

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (Ill. Rev. Stat. 1989, ch. 111 ½, par. 1035(a)). Furthermore, the burden is upon the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. Pollution Control Board, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985). Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter Monsanto Co. v. IPCB, 67 Ill.2d 276, 367 N.E.2d 684 (1977). Accordingly, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

Olin, in its petition, contends that no other test method is available to test the ammunition. (Pet. at 4.) Olin also contends that it is not technically feasible or economically practical to develop another test method. (Pet. at 4-5.) Olin has not submitted a compliance plan in support of its petition. The Agency does not contest the fact that given Olin's testing requirements, that compliance may not even be technologically

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possible. (Agency Rec. at 6.)

The Board finds that Olin has presented adequate proof that immediate compliance with the regulation will cause an arbitrary or unreasonable hardship. Therefore, the Board grants Olin's variance from Section 237.102 for a period of three years. It is uncontested that emissions from Olin's ammunition testing do not significantly impact the environment in the area. It is also uncontested that it is technically infeasible for Olin to conduct these tests without violating Section 237.102.

The Board notes that Olin has requested and received eight similar variances in the past and that Olin has a continuing relationship with the government. In the interest of conserving resources, the Board does not feel it would be prudent to force Olin to petition for another variance after December 31, 1992, as requested by the Agency, if Olin has not yet completed another contract deal with the government. Based on past experience, the Board sees no reason to believe that Olin will not renew its current contract with the government or sign a new contract. Therefore, the Board grants Olin's variance for a period not to exceed three years subject to various conditions.

The Board hereby imposes conditions similar to those in previous variances as suggested by the Agency. The Board will order Olin to report to the Agency in writing if it terminates, extends or renews its existing contract with the government. In addition, the Board will order Olin to report to the Agency in writing if it negotiates any new government contracts relating to ammunition testing. However, the Board will not order Olin to submit to the Agency an evaluation of the contracts realized under this variance which includes a comparison of Olin's bids with those of other companies as recommended by the Agency. (Agency Rec. at 8.) The Board fails to see the environmental relevance of asking Olin to report this information to the Agency. Thus, the Board will not impose condition "J" of the Agency recommendation as a condition of this variance. (Agency Rec. at 8.)

The Board notes that Olin in its petition voluntarily agrees to work towards minimizing the impact of the testing through self-imposed conditions. (Pet. at 7.) Olin agrees to conduct testing only during daylight hours, to not test during adverse weather conditions, and to temporarily suspend testing if it receives a complaint from a nearby citizen. (Pet. at 7.) The Board's order incorporates parts from both Olin's agreement and the Agency's recommendation.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

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ORDER

Olin Corporation is hereby granted variance beginning November 19, 1992, from 35 Ill. Adm. Code 237.102 for ammunition testing conducted at Olin's Test Range and Waste Thermal Treatment facility in Williamson County, Illinois, subject to the following conditions:

1. This variance expires on November 19, 1995.
2. This variance pertains exclusively to open burning relating to ammunition testing pursuant to contracts with the United States Government.
3. Olin shall conduct the open burning activities only between the hours of 8:00 a.m. and 5:00 p.m.
4. Olin shall place the target fuel container on a concrete pad or other impermeable surface. Olin shall collect and accumulate the unburned fuel and the extinguishing medium in containers or a tank for proper disposal or recycling.
5. Olin shall provide a phone number available to receive complaints on a 24-hour per day basis and shall provide such number to John Justice at the address listed in number nine below.
6. Olin shall assign one person the responsibility of responding to citizen complaints, thereby allowing the public access to some one person familiar with the test burning procedures.
7. Should Olin receive private complaints concerning its open burning practices, or should the Agency contact Olin concerning complaints it has received regarding the open burning which is the subject of this variance, Olin shall immediately discontinue testing until meteorological conditions are such that the open burning will not constitute a possible violation of Section 9(a) of the Act.
8. Olin shall immediately discontinue testing when adverse weather conditions, wind speed, wind direction, or meteorological conditions are such that the open burning will cause a possible violation of Section 9(a) of the Act.
9. Olin must keep available records of the testing as may enable it to develop an ammunition testing procedure which does not constitute open burning as defined in the Act.
10. Olin shall provide to the Agency quarterly reports of

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the testing. The first such report shall be due thirty-two (32) days from today on December 21, 1992. Such reports shall be sent to:

Illinois Environmental Protection Agency Division of  
Air Pollution Control  
Attn: John Justice  
2009 Mall Street  
Collinsville, Illinois 62234

The reports shall include, as a minimum, the time and place of each burning, identification of the quantity of oil burned, meteorological conditions in the vicinity, and any complaints received by Olin and action taken in response to any complaints.

11. Olin shall report to the Agency in writing, at the address given below, if it terminates, extends or renews its existing contract with the government. In addition, Olin shall report to the Agency in writing if it enters into any new government contracts relating to ammunition testing.

12. Within forty-five (45) days after November 19, 1992, Olin shall execute a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions. Failure to execute and forward the certification within forty-five (45) days shall render this variance null and void. Olin shall send the certificate to:

Ms. Janet A. Magnuson  
Assistant Counsel  
Bureau of Air  
Illinois Environmental Protection Agency  
P.O. Box 19276  
Springfield, IL 62794-9276

This forty-five day period shall be held in abeyance for any period during which this matter is appealed. The form of the certification shall be as follows:

#### CERTIFICATION

The Olin Corporation, having read the Order of the Illinois Pollution Control Board in PCB 92-130, understands and accepts said order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Olin Corporation

By \_\_\_\_\_  
As Authorized Agent

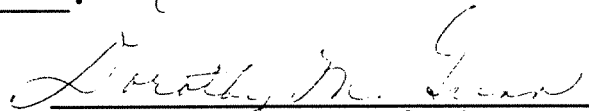
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\_\_\_\_\_  
DATE

IT IS SO ORDERED

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1041) provides for appeal of final opinions and orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19<sup>th</sup> day of November, 1992, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board