

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1991

OLIN CORPORATION,)	
a Virginia Corporation,)	
)	
Petitioner,)	
)	PCB 91-2
v.)	(Variance)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 3, 1991 Petitioner Olin Corporation ("Olin") filed its Petition for Variance from 35 Ill. Adm. Code 237.102 as related to the prohibition of open burning. The variance request is to accommodate the open burning of four buildings and miscellaneous equipment contaminated with explosives. The length of the variance request is not contained in the petition.

The Illinois Environmental Protection Agency ("Agency") filed its Variance Recommendation on April 5, 1991. The Agency initially recommended that variance be denied. On April 15, 1991, Olin filed an Amended Petition ("Am. Pet."). The matter was set for hearing for July 23, 1991 but cancelled upon the request of the parties. Thereafter, the Agency filed its Amended Variance Recommendation ("Am. Rec.") on September 20, 1991 which recommended that the variance be granted subject to conditions. The Petitioner filed its response on October 11, 1991 accepting the Agency's Recommendation. Petitioner's hearing request was withdrawn in their response.

Based on the record before it, the Board finds that Olin has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. Accordingly, the variance will be granted, subject to conditions consistent with this Opinion and as set forth in the attached Order.

BACKGROUND

Petitioner operates industrial facilities leased from the U.S. Department of Interior, Crab Orchard National Wildlife Refuge, Fish and Wildlife Service, located in the former U.S. Army Ordnance Plant near the city of Marion, rural Williamson County, Illinois. Various propellants, pyrotechnics, pyrotechnic devices, small to large caliber ammunition, and gas generator solid propellant propulsion devices are developed and manufactured at this location for the U.S. Department of Defense and for export to foreign governments. In addition, automobile self deployed air bag inflation systems are under development for commercial business opportunities.

As an adjunct to the development and manufacturing operations described above, Petitioner also owns and operates a test range and waste thermal treatment facility located on approximately 290 acres of strip mine spoil lands near the city of Marion in rural Williamson County, Illinois. This facility provides the capability to ballistically test the various munitions and gas generator products and to treat explosive wastes generated from the various operations. Petitioner proposes to open burn four (4) buildings and miscellaneous equipment contaminated with explosives. Petitioner normally treats explosive waste at its waste thermal treatment facility identified in "Exhibit A" of its Petition. The items included in the request, Olin states, cannot be safely dismantled for treatment at the waste thermal treatment facility. Petitioner therefore, proposes to treat these items by open burning to render them safe for proper disposal (Pet., p. 3). The proposed open burning would be conducted within the development and manufacturing facility, designated by Olin as the "D" area.

REGULATORY FRAMEWORK

Olin seeks variance from the general prohibition on open burning set forth at 35 Ill. Adm. Code 237.102. That section reads, in pertinent part:

- a) No person shall cause or allow open burning, except as provided by this Part.

In consideration of any variance, the Board determines 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 1/2, 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 (1977), 135 Ill. App. 3d, 481 N.E.2d 1032). Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

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

COMPLIANCE PLAN

Olin's proposed compliance plan is a one-time burn of contaminated buildings. Olin states:

To the best of the Petitioner's knowledge there is no other suitable method available to safely destroy these buildings or prepare the building debris and this equipment for acceptable disposal except by open burning.

Olin has outlined the various steps it will take to minimize the environmental effects. The Agency states that the Petitioner will conduct the open burn in accordance with RCRA standards and upon obtaining a waiver of compliance from USEPA from National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. (Am.Rec. par. 20)

ENVIRONMENTAL EFFECTS

Olin has calculated the air quality effects at the location of the nearest residence to the proposed open burning site and attached that data ("Exhibit E"). Olin states that:

Examination of the data indicates that emissions from the proposed open burning will not cause particulate or carbon monoxide concentrations to exceed USEPA Standards of distances from the proposed open burning site equivalent to those of the nearest residences, and will not under any circumstances result in air quality which will be inconsistent with the Clean Air Act and the Federal regulations adopted pursuant thereto. Furthermore, Petitioner believes that, based on this data and the annual emissions data (Exhibit C), there would be no impact on the environment or human health as a result of the open burning.

In its original recommendation, the Agency contested Olin's assessment of the environmental impact. The Agency contended that Olin has failed to address the fact that the proposed burn could adversely effect air quality in the area as asbestos fibers could be emitted into the air during the proposed burn and subsequent clean-up activities. (Rec. par. 5).

The Agency's amended recommendation requires Olin to comply with both RCRA and NESHAP requirements, or to obtain a waiver from NESHAP requirements from USEPA.

PUBLIC INTEREST

Olin has described the steps it will take to protect the public interest as follows:

Petitioner will take sufficient measures during the proposed open burning to minimize effects on human, plant, and animal life in the area. Burning will be conducted on one (1) day during daylight hours only and

will not be conducted during adverse weather conditions. Sufficient non-contaminated combustible materials (wooden pallets) will be spread inside the buildings as appropriate to insure rapid spread of fire, intense heat, and completion of combustion. A limited amount of #2 fuel oil will be used to start the fire. Fire protection will be provided as necessary to prevent spread of fire from the proposed sites. Petitioner's operating procedures and plant safety rules will authorize a minimum number of personnel to be involved in the proposed open burning operation. It will include the necessary safety measures for the proposed open burning and will address sufficient measures to control any undesired spread of fire. (Pet., p. 9)

Debris remaining after open burning (except for concrete floors and concrete dividing walls) will be collected and disposed of in a permitted landfill. Some of the scrap metal debris may be distributed to recyclers. Asbestos containing materials will be collected and disposed in accordance with all applicable regulations. (Id.)

HARDSHIP

Since continued storage of this equipment and continued presence of these buildings serves no useful purpose, but serve to perpetuate hazards, and since no alternate safe disposal method is known by Petitioner, Petitioner submits that denial of this petition would impose an unreasonable hardship on Petitioner. (Pet., p. 10)

The Agency does not contest Olin's contentions.

CONCLUSION

The Board finds that Olin must dispose of four buildings contaminated by explosive waste as their continued presence is a safety hazard. The Board also finds that Olin cannot safely dismantle these buildings which Olin proposes to open burn. The Board notes that a traditional compliance plan does not normally involve a one-time event such as Olin proposes. However, Olin has submitted a compliance plan which minimizes the environmental effects from the proposed open burning. The Agency has reviewed the compliance plan and has recommended to the Board that the Board grant the variance subject to conditions.

Based upon the foregoing, the Board finds that denial of variance to Olin Corporation would impose an arbitrary or unreasonable hardship upon the Petitioner. Therefore, variance is granted by the Board today, subject to conditions. Olin is authorized to conduct one day of open burning in a time, place and manner which minimizes the emission of air contaminants. The open burn is to be conducted in accordance with NESHAP or upon obtaining a waiver of compliance from these standards from USEPA.

ORDER

Olin Corporation is hereby granted variance from 35 Ill. Adm. Code 237.102 for a period not to exceed one day between October 23, 1991 and November 1, 1992, subject to the following conditions:

1. Olin shall comply with NESHAP requirements or obtain a waiver from the USEPA from NESHAP requirements prior to the proposed burn.
2. Olin shall open burn only during daylight hours, shall limit it to those buildings and equipment referenced in Petitioner's variance petition (PCB 91-2), and shall open burn only on a clear calm day on which the wind velocity is more than two miles per hour but less than ten miles per hour. Burning shall not take place when the wind is blowing from the north, northeast or northwest.
3. Olin shall limit the amount of #2 fuel oil burned to 10 gallons.
4. Olin shall comply with all applicable RCRA requirements.
5. Olin shall supervise the open burn and shall train its employees in the proper procedures to be followed. In addition, training manuals delineating the proper procedures shall be readily available to Olin's employees and to Agency inspectors.
6. Olin shall notify the surrounding community, including the local fire department and county forestry service, of the exact date and time of the burn and shall include a telephone number for nearby residents to call in the event of any complaints. Copies of such notifications shall be sent to the Agency.
7. Olin shall submit to the Agency documenting all activities associated with the burn and cleanup within 30 days.

Within forty-five days of the date of this Order, Petitioner shall execute and forward to :

Julie K. Armitage
Division of Legal Counsel
Illinois Environmental Protection Agency
P.O. Box 19276
2200 Churchill Road
Springfield, Illinois 62794-9276

a Certificate of Acceptance and agreement to be bound to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the Certificate within 45-days renders this variance void and of no force and effect as a shield against the enforcement of rules from which this variance is granted. The form of Certificate is as follows.

I, (We), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 91-2, October 24, 1991.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act, Ill.Rev.Stat. 1989, ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of October, 1991 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board