

ILLINOIS POLLUTION CONTROL BOARD

June 20, 2002

THE ENSIGN-BICKFORD COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 02-159
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board upon a petition for variance (petition) filed by the Ensign-Bickford Company (EBCO) on March 22, 2002. Pursuant to the Illinois Environmental Protection Act (Act), the Board is charged with the responsibility of granting variances from Board regulations whenever immediate compliance with Board regulations would impose an arbitrary or unreasonable hardship on the petitioner. 415 ILCS 5/35(a). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f). The Agency is also charged with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a).

EBCO is seeking a variance of up to five years which will allow it to open burn certain explosive wastes pursuant to 35 Ill. Adm. Code 237.103. Pet. at 1.¹ EBCO has waived its right to a hearing in this matter, and no hearing is required pursuant to the Board's rules. Pet. at 14; 35 Ill. Adm. Code 104.124 and 104.160(c). On May 3, 2002, the Agency filed its recommendation in response to the petition. The Agency recommends that the variance be granted, subject to certain conditions, until May 3, 2003 (a year after the Agency recommendation was filed), or for six months from the date the Board denies petitioner's adjusted standard (*In re: The Ensign-Bickford Company*, AS 00-5), whichever is sooner. Rec. at 1. On May 28, 2002, EBCO filed a motion to file a response *instanter* and a response. Also on May 28, 2002, EBCO filed motion for expedited review. On June 11, 2002, the Agency filed a motion for leave to file a response the EBCO's response, accompanied by a response (Ag. Resp.). On June 12, 2002, the Agency filed a motion for leave to supplement the record. On June 17, 2002, both parties filed a joint motion for leave to file a joint statement. The Board grants EBCO's motion for leave to file a response *instanter*, and grants

¹ The petition for variance will be cited as "Pet. at ."; the Agency's recommendation will be cited as "Rec. at ."; and the response will be cited as "Res. at ."

the motion for expedited review, consistent with Board resources. The Board also grants the Agency's motion to file a response to EBCO's response and the Agency's motion to supplement the record. The motion for leave to file a joint statement is also granted.

In a variance proceeding, the burden is on the petitioner to present proof that immediate compliance with Board regulations would cause an arbitrary or unreasonable hardship which outweighs public interest in compliance with the regulations. Willowbrook Motel v. PCB, 135 Ill. App. 3d 343, 349, 350, 481 N.E.2d 1032, 1036, 1037 (1st Dist. 1977). Pursuant to Section 35(a) of the Act, the Board finds that EBCO has presented adequate proof that immediate compliance with the Board regulations for which relief is being requested would impose such a hardship. 415 ILCS 5/35(a) (1998).

EBCO's requested variance relief is granted, subject to the conditions specified at the end of this order. The variance will begin as of the date of this order. This variance will expire on June 20, 2003, or six months after the Board's final decision in the previously filed adjusted standard, whichever occurs first.

BACKGROUND

The Facility

EBCO operates a 456-acre explosive products manufacturing facility, which is located near the town of Wolf Lake, Union County, Illinois. Pet. at 1, 5. The facility is bordered by the Shawnee National Forest, Wolf Lake, and farmland. Pet. at 5-6. The facility is situated approximately one-half hour equidistant from Carbondale, Illinois and Cape Girardeau, Missouri. Pet. at 5. The town of Wolf Lake has a population of approximately 250 persons, and the nearest residence is approximately one-half mile from the EBCO facility. Pet. at 6. EBCO is the largest manufacturing employer in Union County and has approximately 250 employees. Pet. at 6.

EBCO makes cast boosters, Division 1.1 explosives, which are used in the mining and oil exploration industries. Pet. at 4. EBCO also makes Primadet® nonelectric delay detonator assemblies. Pet. at 4. While manufacturing these products, waste explosives are generated in the form of off-specification product, explosive-contaminated materials, explosive-contaminated wastewater treatment sludge, explosive-contaminated spent activated carbon, and explosive-contaminated solvent from laboratory and maintenance procedures. Pet. at 5

Prior Variances

The Board has previously granted EBCO several variances. In 1989, the Board first granted EBCO and the Trojan Corporation (both wholly-owned subsidiaries of Ensign-Bickford Industries) a variance authorizing them to open burn explosive waste for a period of five years. EBCO and Trojan Corp. v. IEPA, PCB 88-156 and PCB 88-168 (Aug. 10, 1989). In August 1991, the Board modified the 1989 variance, thereby allowing EBCO and Trojan Corp. to combine their open burning limitations and also allowing a greater amount of explosive waste to be burned. EBCO v. IEPA, PCB 90-242 (Aug. 22, 1991). In September 1991, the Board

again modified the 1989 variance, allowing EBCO to flash metallic process equipment and open burn wooden process equipment for one year. EBCO and Trojan Corp. v. IEPA, PCB 91-96 (Sept. 26, 1991).

The Board granted EBCO another variance in 1994, which provided for an increase in the total amount of wastes to be burned over the previous variances, and it also combined limits on burning certain types of materials. EBCO v. IEPA, PCB 93-139 (Sept. 1, 1994). On November 18, 1999, the Board allowed EBCO to extend the variance that the Board granted in 1994. EBCO v. IEPA, PCB 00-24 (Nov. 18, 1999).² On November 23, 1999, EBCO filed a petition for an adjusted standard pursuant to Section 237.103 (*In re: The Ensign-Bickford Company*, AS 00-5). The Agency filed an adverse recommendation on May 6, 2002. The matter will soon go to hearing.

The Board has also granted provisional variances to EBCO. In 1990, the Board granted EBCO a 45-day provisional variance to allow the open burning of two wooden buildings contaminated with explosive material that were decommissioned as the facility was modernized. EBCO v. IEPA, PCB 90-83 (Aug. 26, 1990). On November 4, 1999, the Board granted EBCO a provisional variance to allow open burning pursuant to the terms set forth in PCB 93-139 with the exception of flash burning equipment potentially contaminated with explosive waste. EBCO v. IEPA, PCB 00-78 (Nov. 4, 1999). On March 7, 2002, the Board granted EBCO a provisional variance to allow open burning pursuant to the terms set forth in PCB 00-24 with the exception of flash burning equipment potentially contaminated with explosive waste. EBCO v. IEPA, PCB 02-118 (Mar. 7, 2002). This provisional variance expired on April 22, 2002.

As of January 1, 1996, Trojan Corp. merged with EBCO. EBCO is the successor corporation. Pet. at 3.

APPLICABLE REGULATIONS

EBCO seeks a variance pursuant to 35 Ill. Adm. Code 237.103, which states:

Open burning of wastes creating a hazard of explosion, fire or other serious harm, unless authorized by other provisions in this Part, shall be permitted only upon application for the grant of a variance as provided by the Environmental Protection Act (Act) (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1001 *et seq.*)³ and by the Pollution Control Board's (Board) Procedural Rules (35 Ill. Adm. Code: Subtitle A, Chapter I). 35 Ill. Adm. Code 237.103.

² The Board denied EBCO's request for a retroactive variance, so the variance in PCB 00-24 began on November 18, 1999, and expired on November 18, 2001.

³ Variances can now be found in the Act at 415 ILCS 5/35 (2000).

Section 35 Ill. Adm. Code 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. 35 Ill. Adm. Code 237.103

THE REQUESTED VARIANCE, AGENCY RECOMMENDATION, AND RESPONSE

EBCO's instant petition seeks relief from Section 237.102 pursuant to 237.103 of the Board's rules. Pet. at 3. Section 237.102 prohibits open burning, but Section 237.103 allows open burning of explosive wastes only if such burning is allowed by a variance. 35 Ill. Adm. Code 237.102, 237.103, Pet. at 3.

EBCO seeks a variance consistent with the prior PCB 00-24 variance. Pet. at 3. EBCO seeks to burn explosive waste, burn potentially explosive-contaminated wastes, and flash burn equipment potentially containing residues of explosive materials. Pet. at 3. Flashing is a method to thermally sanitize equipment that may contain residues of potentially explosive materials. See EBCO and Trojan Corp. v. IEPA, PCB 91-96, slip op. at 1.

EBCO seeks the variance for the earliest of either: (1) the Board's grant of EBCO's pending petition for adjusted standard, AS 00-5, or (2) until the expiration of one year after the Board denies the adjusted standard in AS 00-5; or (3) five years from the date of issuance of the variance. Pet. at 1.

Waste Categories

The prior variance in PCB 00-24 limited EBCO's open burning as follows:

Materials to start fires	100 lbs/week
Explosive-contaminated materials	5,000 lbs/week
Non-metallic explosive wastes, including aluminized TNT	1,200 lbs/week

EBCO has been able to comply with these limitations by minimizing the waste generated and by scheduling and continually improving certain operations. Pet. at 6. The limit applicable to the explosive-contaminated packaging limitation is a weekly maximum, which EBCO has historically only approached when prolonged weather conditions limited EBCO's ability to operate for a long period of time. Pet. at 6.

In the instant petition, EBCO's schedule for open burning is as follows:

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

Pet. at 7.

In its recommendation, the Agency approves of EBCO's proposed schedule. Rec. at 16. However, the Agency notes that it has studied EBCO's quarterly reports submitted under the PCB 93-139 variance. Pet. at 6. The reports reveal that EBCO has never burned the full amount of wastes allowed by the PCB 93-139 variance. The Agency summarizes the total amounts burned as follows:

Year	Potentially Explosive Contaminated Waste	Explosive Waste	Total Amount in lbs/year
1995	94,480	29,460	123,940
1996	103,606	15,970	119,576
1997	76,400	23,541	99,941
1998	35,915	13,872	59,787
1999	8,555	6,295	14,850
2000	26,280	8,535	40,815
2001	5,100	4,488	9,588

Rec. at 6.

The Agency recommends, for the first time in the history of these variances, capping the annual limit of explosive waste to 15,000 pounds and the potentially explosive-contaminated waste at 40,000 pounds. Rec. at 6-7. The Agency explains that the weekly limit requested (6,300 pounds) would result in an annual total amount of 327,600 pounds and "is well beyond levels that can be supported on a historical basis." Rec. at 6. Additionally, the Agency argues that since EBCO found another recycler willing to pay for some of EBCO's potentially explosive-contaminated waste, EBCO's suggested annual limits of 31,200 pounds of explosive waste and 65,000 pounds of potentially explosive-contaminated waste are higher than needed. Rec. at 6.

EBCO responds that the Agency explained that the Agency wanted to limit the annual amounts to ensure that EBCO would not ship waste from other EBCO facilities to the instant

Wolf Lake facility. Resp. at 3. EBCO argues that federal and state law both prohibit such activity and concludes there is no basis for the annual limits. Resp. at 3.

EBCO also argues that the amount burned in 2001 is not typical for EBCO. Resp. at 4. EBCO argues that in 2001, EBCO was conducting the RCRA closure of its interim status RCRA unit and constructing its new resource conservation and recovery act (RCRA) Part B facility to be used for open burning. Resp. at 4. These activities precluded operating the RCRA Part B unit. Resp. at 4. Also, when the variance in PCB 00-24 expired on November 18, 2001, EBCO shut down the unit. Resp. at 4.

EBCO states that EBCO told the Agency that EBCO had found a cardboard recycler willing to accept clean outer Department of Transportation packaging material. Resp. at 4. EBCO claims that this is only a small portion of the potentially explosive-contaminated waste stream. Resp. at 4.

In the Agency's response to EBCO's response, the Agency states that it indicated to EBCO during a meeting that the Agency has a general policy of imposing annual limits when there are weekly limits. Ag. Resp. at 3. EBCO also clarifies that it did not recommend using figures from 1999-2001 as a basis for deriving annual limits. Ag. Resp. at 4. Rather, the Agency argues it calculated its recommended annual limits by using the highest numbers from the last four years and then rounding up. Ag. Resp. at 4.

ENVIRONMENTAL IMPACT

When deciding to grant or deny a variance petition, the Board is required to balance the petitioner's hardship in complying with Board regulations against the impact that the requested variance will have on the environment. Monsanto Co. v. PCB, 67 Ill. 2d 276, 292, 367 N.E.2d 684, 691 (1977).

EBCO states that emissions from the materials EBCO intends to burn are small enough such that the impact on ambient air quality could not be measured at the boundaries of the site. Pet. at 10. EBCO intends to open burn explosive waste and potentially explosive-contaminated wastes and to flash equipment that's predominantly metallic. Pet. at 3, 10. EBCO notes that Huff & Huff conducted dispersion modeling using the Open Burn/Open Detonation Dispersion Modeling. Pet. at 10. EBCO represents that the modeling shows that the open burning activities at EBCO will not adversely impact air quality or present a threat of air pollution to human health or the environment. Pet. at 11.

EBCO's facility is in a rural area that is in attainment for the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants. Pet. at 11. The nearest monitoring station, which is located 20 miles northeast of Wolf Lake in Carbondale, only measures total suspended particulates (TSP). To the best of EBCO's knowledge, there have been no exceedences of ambient air quality standards for TSP and/or PM-10 (particulate matter less than 10 microns) in Union County. Pet. at 11.

The Agency agrees that the modeling shows that the proposed burning will not cause or contribute to any violations of the NAAQS. Rec. at 12. However, the Agency notes that the effect of the open burning cannot be determined for other possible air quality impacts of non-criteria pollutants. Rec. at 12. The Agency also states that given the uniqueness of the project, it is difficult to estimate the environmental impact in terms of standard measures. Rec. at 11. The Agency also agrees that there have been no exceedences of the PM-10 standard over the past three years at the nearest monitoring station. Rec. at 4. However, the Agency notes that the nearest monitoring station is in Jackson County. Rec. at 5. Wolf Lake is located in Union County.

In response, EBCO states it does not know what standards the Agency is applying when the Agency states that because of the project's uniqueness, the Agency cannot estimate the environmental impact in terms of standard measures. Resp. at 10. EBCO further states that EBCO is before the Board because of the project's uniqueness. Resp. at 10.

HARDSHIP

In its consideration of a variance, the Board is required, pursuant to Section 35(a) of the Act, to determine whether the petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to comply with the Board's regulation at issue. 415 ILCS 5/35(a) (1998). In order to comply with the Board's regulations at 35 Ill. Adm. Code 237.102 and 237.103, EBCO would have to find alternative means to legally dispose of its wastes.

In several of the previous variances granted to EBCO and Trojan Corp., the Board has directed EBCO and Trojan Corp. to continually investigate new technology to provide for an economically feasible and technically reasonable alternative to open burning. EBCO and Trojan Corp. v. IEPA (Aug. 10, 1989), PCB 88-156 and PCB 88-168, slip op. at 7; EBCO and Trojan Corp. v. IEPA (Aug. 22, 1991), PCB 90-242, slip. op at 4; EBCO v. IEPA, PCB 93-139 (Sept. 1, 1994).

In the instant petition, EBCO claims that denying the instant petition would impose an arbitrary and unreasonable hardship on EBCO. Pet. at 9. EBCO states EBCO has continued to investigate alternatives to open burning. EBCO mentions that it worked with the Agency and got a RCRA Part B permit for its state of the art facility constructed for open burning. Pet. at 7. The RCRA permit includes provisions for open burning. Pet. at 7. EBCO argues that no viable alternative currently exists for the materials for which EBCO seeks relief. Pet. at 9. Off-site disposal of the bulk shipments has undue risks and other alternative treatment technologies have not been proven effective and safe. Pet. at 9.

Specifically, EBCO investigated the TWI facility in Sauget, Illinois, the ICI facility in Joplin, Missouri, and the former Laidlaw facility in Colfax, Louisiana. Pet. at 8. EBCO explains that it would cost approximately \$250,000 per year for shipment of its explosive

wastes from the Wolf Lake facility to Joplin. Pet. at 8.⁴ Use of the Colfax open burn facility is allegedly infeasible from a cost, safety, security and technology perspective to send explosive-contaminated waste so far away. Pet. at 8. Further, EBCO determined that although certain small-scale shipments of waste materials could be feasibly sent, none of the facilities are suitable to receive EBCO's major bulk shipments of explosive wastes. Pet. at 8-9.

EBCO states that it continues to recycle some outer explosive packaging and explore the alternative of recycling additional outer packaging. Pet. at 8.

The Agency responds that EBCO has refused to give the Agency any of its financial data to determine the economic reasonableness of the cost of \$250,000 per year to ship explosive wastes to Joplin. Rec. at 10. The Agency also states that EBCO has not provided any cost information for landfilling the waste that would otherwise be open burned. Rec. at 11. Additionally, EBCO has not provided any cost information for research into other alternatives such as retention of a consultant to examine alternatives, chemical treatment and use of on-site thermal treatment unit. Rec. at 11. The Agency also notes that EBCO is recycling some potentially explosive-contaminated outer packaging and is currently developing methods to eliminate the open burning of additional outer packaging that can be safely recycled. Rec. at 11. However, EBCO has not provided any specific information on the efforts being undertaken, the schedule, or the cost. Rec. at 11.

The Agency also states that in working with EBCO to identify alternatives to open burning, the Agency conducted a pollution prevention audit in 1998. Rec. at 10. The audit identified several strategies for waste reduction with respect to materials that are only potentially explosive-contaminated waste. Rec. at 10. The Agency states that it made several recommendations, including use of reusable, washable cloth uniforms instead of disposable paper clothing. Rec. at 10. The Agency notes that EBCO did not address this recommendation or the other recommendations made in the pollution prevention report. Rec. at 10.

EBCO denies that it has not addressed the recommendations in the audit. Resp. at 8. EBCO claims that EBCO thoroughly reviewed the suggestions and spent substantial time, money and effort in the review. Resp. at 8. EBCO determined that the suggestions were simplistic with unproven effectiveness, since many were based on research still in progress. Resp. at 8. Regarding the reuse of worker clothing, EBCO responds that reusing the contaminated clothing would generate K044 and K045, listed hazardous wastes. Resp. at 8. Also, the disposable material currently worn by the workers as protection "is approved as the best and safest material for workers" at the facility. Resp. at 8.

⁴ EBCO explains that its two other EBCO facilities in Kentucky and Connecticut that use off-site disposal means are significantly different than the Wolf Lake facility, because the two facilities do not have the quantity of packaging material that the Wolf Lake facility has. Pet. at 8. The waste materials from the Kentucky and Connecticut facilities are easily containerized, less dusty, and more readily capable of being desensitized and safely shipped. Pet. at 8.

EBCO further responds that landfilling is not feasible, as it is unsafe and not environmentally sensitive. Resp. at 9. EBCO did not provide cost information regarding landfilling because cost is not relevant to this determination by EBCO. Resp. at 9. EBCO states that it previously explained to the Agency that chemical treatment is not available. Resp. at 9. The suggested on-site thermal treatment unit would cost millions of dollars, and would require RCRA permitting. Resp. at 9.

COMPLIANCE PLAN

EBCO states that it filed a petition for an adjusted standard to allow permanent relief for open burning of the waste. Pet. at 3. EBCO is also developing methods to safely recycle additional outer explosives packaging material. Pet. at 8. EBCO plans to take sufficient precautionary measures to minimize any effect from open burning on human health, plant, and animal life in the area. Pet. at 10. As a condition to this variance, EBCO will diligently pursue an alternative to open burning. Pet. at 11.

CONSISTENCY WITH FEDERAL LAW

EBCO states that the variance may be granted consistent with federal law. Pet. at 14. In accordance with Section 35 of the Act, the Board may grant variances only where they are consistent with federal law. 415 ILCS 5/35 (2000). Sections 237.102 and 237.103 of the Board's rules are not part of the Illinois State Implementation Plan (SIP) for achieving the NAAQS. Rec. at 12. Federal law does not require the Board's rules at issue (Section 237.102 and 103). The Agency acknowledges that granting the variance will not require revising the Illinois SIP. Rec. at 12. The Board finds that granting this variance is consistent with federal law.

DISCUSSION

Expiration Dates

Section 36(b) of the Act states that a "variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown." 415 ILCS 5/36(b) (1998). EBCO first filed a petition for a variance from the Board's open burning rules in 1989, and the variance was subsequently extended and expanded in scope. The most recent variance extension was in 1999 for a period of two years. See EBCO v. IEPA, PCB 00-124 (Nov. 18, 1999). The Board has approved other variance extensions for a period longer than a year. See Village of North Aurora v. IEPA, (Apr. 20, 1995), PCB 95-42; City of Springfield v. IEPA, PCB 93-135 (Dec. 16, 1993); Department of the Army v. IEPA, PCB 92-107 (Oct. 1, 1992).

In the instant variance, the Board finds EBCO's request for a variance compelling. However, the Board will only grant the variance for one year from today or six months after the decision in AS 00-5, whichever occurs first.

Other Conditions

Both parties submit almost identical proposed conditions for the variance. The parties disagree, however, mainly on the length of the variance, and the annual limits on the amount of waste. The Board has already set the length of the variance at one year. Regarding the waste limitation issue, the Board finds that in the instant variance there is no need to limit EBCO to 15,000 pounds for explosive waste and 40,000 pounds for potentially explosive-contaminated waste. EBCO has represented it does not intend to bring additional waste from its other plants to the Wolf Lake plant. Also, given the short term of the variance and EBCO's claim that the amounts burned in 2001 are not representative of a typical year at EBCO, the Board does not believe limiting the amount of waste is necessary. The Board finds the Agency's arguments for limiting the amount of waste insufficient to support limiting the waste on an annual basis.

CONCLUSION

The Board finds that, if the instant variance petition is not granted, EBCO will incur an arbitrary or unreasonable hardship. There are currently no viable alternatives to open burning of the bulk wastes. The open burning will not affect the NAAQS, nor will the burning violate other federal or State laws. The Board will grant EBCO a variance to open burn explosive waste and explosive-contaminated waste, provided that EBCO continue to investigate alternate methods of treatment, storage, and disposal of its explosive wastes and potentially explosive-contaminated wastes. The variance will begin on the date of this order and last for one year, or six months after the Board's decision in AS 00-5, whichever occurs first.

This order does not relieve EBCO of its responsibility to comply with applicable local emergency open burning restrictions or local emergency bans.

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

ORDER

EBCO is hereby granted a variance from 237.102 pursuant to 35 Ill. Adm. Code 237.103, subject to the following conditions:

1. Duration
 - a. This variance shall begin on June 20, 2002
 - b. This variance shall expire on June 20, 2003, or six months after the Board's final decision in AS 00-5, whichever occurs first.
2. Explosive waste and explosive-contaminated waste.
 - a. Petitioner shall diligently pursue an alternative to open burning its explosive waste and explosive-contaminated waste.

- b. Petitioner shall submit to the Agency information pertaining to requirement (2a) as soon as such information becomes available.
- c. At any time during the variance period, the Agency may identify new alternatives to open burning for petitioner to evaluate for technological feasibility and economic reasonableness. The evaluation shall be completed and a report shall be submitted to the Agency in soon as practical after petitioner receives notice of such new alternative.
- d. Petitioner, 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.
- e. Petitioner must take reasonable measures to minimize the contamination of materials during manufacturing operations.
- f. Petitioner 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).
- g. Petitioner 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 petitioner is in operation.
- h. The report in paragraph g should be addressed to:

Mr. John Justice, Regional Manager
Bureau of Air
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, IL 62234
- i. 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.
- j. Petitioner must use cages to burn explosive-contaminated materials so that the dispersment of ash is minimal. Petitioner must maintain the cages so that the design function and efficiency of the cages are not substantially altered from the cages as built.

- k. Petitioner must promptly clean up and dispose of any ash after every burn in accordance with all RCRA requirements.
- l. Petitioner must use a concrete pad for open burning of K044 and K045 sludges to prevent residual waste and waste constituents from contacting surface soils.
- m. Petitioner must comply with all RCRA and Occupational Health and Safety (OSHA) requirements.
- n. Petitioner must have fire prevention plans and equipment ready and in place at the facility prior to the first burn.
- o. Open burning must at all times be supervised. Petitioner 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.
- p. Petitioner must fence off the entire burn area prior to the first burn and the fencing must remain throughout the variance.
- q. Petitioner 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(h).
- r. The above-mentioned notification must include a telephone number indicating that nearby residents or other persons may call in the event of any complaints.
- s. Any complaints must be forwarded to the Agency's Regional Office in Collinsville within twenty-four hours.
- t. If a complaint is received, EBCO and the Agency must evaluate the complaint to determine whether any action can and should be taken by EBCO to minimize the effect complained of in subsequent burns.
- u. Petitioner 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

3. Flashing of Contaminated Equipment

- a. The open burning site must be limited to the smallest necessary space, including areas designated for safety reasons.

- b. Petitioner 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. Petitioner must comply with requirements 2-i, 2-k, 2-m, 2-n, 2-o, 2-q, 2-r, and 2-s whenever flashing is conducted.
- e. Petitioner must notify the Agency of the exact date and time when the proposed flashing of equipment will occur at least five business days in advance.

IT IS SO ORDERED.

If petitioner chooses to accept this variance, within 45 days after the date of this opinion and order, petitioner shall execute and forward to:

Rachel L. Doctors
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, IL 62794-9276

a certificate of acceptance and agreement to be bound by all the 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. The form of the certificate is as follows:

I (We), _____, having read the opinion and order of the Illinois Pollution Control Board, in PCB 02-159, dated June 20, 2002, understand and accept the said opinion and order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

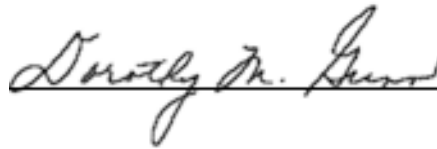
By: Authorized Agent

Title

Date

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 opinion and order on June 20, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board