

The subject matter of this variance is certain multipurpose ammunition (30 MM/20 MM MPC and 30 MM/20 MM HE1). Pursuant to Contract FO8635-82-C-0301, Olin asserts that it is required to demonstrate the capability of the ammunition to pierce enemy vehicle fuel tanks and ignite the fuel which the tanks contain.

The contract is said to require that ammunition be fired at a maximum rate of 8 rounds per day into tanks containing 25 to 30 gallons of low sulfur (.025%) distillate fuel oil. Approximately 5 gallons of fuel oil will burn per firing, the remaining oil to be caught in a sump area and drained to an underground storage tank for reuse. Each burning is expected to last 5 minutes per firing, visible flames lasting for the first 2 minutes. During the life of the contract, Olin expects to expend 300 rounds of ammunition and 1250 gallons of distillate oil.

Olin alleges that denial of variance will impose an arbitrary or unreasonable hardship, as it knows of no other suitable method to conduct the subject tests required by the Air Force except open burning. Olin submits no financial data, but it asserts that it will suffer present economic loss if unable to meet current contractual requirements, and possible future loss of business opportunities to provide similar services. Olin states that the impact on human, plant and animal life in the test area will be minimized by the structures erected at the site pursuant to the plans contained in Exhibit D, by daylight-only testing, and by Olin's adherence to the test procedures contained in Exhibit C.

Olin further asserts that the emissions from these test firings will have no significant effect on air quality. Combustion of the fuel oil is expected to result in emissions of particulates, sulphur dioxide, carbon monoxide, nitrogen oxide, and volatile organics, while detonation of explosives will result in emissions of particulates, carbon monoxide, and ammonia. To demonstrate the emissions from these burnings, Olin conducted sample tests in June, 1983, which it videotaped. The Board was provided with still photographs of said tests, and the videotapes were viewed by the Agency.

The Agency states that, based on Olin's data and calculations as verified by the Agency, the proposed test firing will not significantly impact the air quality of the Region, which is considered attainment for all criteria pollutants. Assuming a total of 250 burns with 5 gallons of fuel oil per burn, annual emissions are calculated to be 0.00125 tons of particulates, 0.02225 tons of sulfur dioxide, 0.003125 tons of carbon monoxide, and 0.0125 tons of nitrogen oxide.

The Agency notes that it has contacted the residents of the home nearest the proposed test range, which is located about $\frac{1}{2}$ mile north-northwest of the proposed site. The residents had no

objection to grant of variance, provided that the "wind and its direction" cause no problems. The Agency therefore recommends grant of variance for a year, conditioned upon Olin's compliance with its Standard Operating Procedures, testing and reporting requirements, and cessation of testing under adverse meteorological conditions.

Given the insignificant air quality effects of the proposed emissions, the apparent adequacy of Olin's "Standard Operating Procedures", and Olin's allegations of harm, the Board finds that denial of variance would impose an arbitrary or unreasonable hardship. A one-year variance will be granted subject to the conditions outlined in the attached Order. The Board will not, however, grant the retroactive variance requested by Olin, as no justification has been given for this unusual relief other than the fact that the initial tests are a fait accompli. In this context, the Board notes that the Agency questions whether and when Olin knew of its need to obtain a variance from Rule 502(a) in order to legally perform its side of the Olin-Air Force contractual bargain. Olin is cautioned not to assume the automatic availability of variance relief to enable it to comply with any later-negotiated defense contracts.

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

ORDER

1. Petitioner, Olin Corp., is hereby granted a variance from Rule 502(a) of Chapter 2: Air Pollution, to allow test firings as required by its Contract FO8635-82-C-0301 until August 30, 1984, subject to the following conditions:

A. Olin shall conduct the open burning activities only in accordance with the Standard Operating Procedures attached to its July 29, 1983 petition as Exhibit C, which are incorporated herein by reference as if fully set forth.

B. 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.

C. Olin shall keep available such 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.

D. Olin shall submit quarterly reports of the testing to the Agency, the first such report due thirty (30) days from the date of the Board order entered in this cause. Such reports shall be sent to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
115 A West Main Street
Collinsville, IL 62234

Such reports shall include, as a minimim, time and place of each burning, identification of the quantity of oil burned, meteorological conditions in the vicinity, and complaints received by Olin and action taken thereon.

2. Within thirty-five (35) days after the date of the Board Order, the Petitioner shall execute and send to:

Mr. Joseph R. Podlewski, Jr.
Enforcement Attorney
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706

a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions.

This thirty-five (35) day period shall be held in abeyance for any period during which this matter is being appealed. The form of the certification shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 83-102, dated _____, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

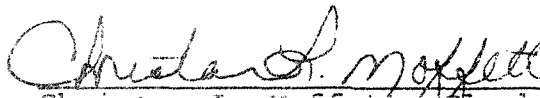
Title

Date

3. Olin's July 29, 1983 request that Exhibit C to its petition be given "nondisclosure" status pursuant to 35 Ill. Adm. Code 101.107(c) is granted.

IT IS SO ORDERED.

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



Christan L. Moffett, Clerk
Illinois Pollution Control Board