ILLINOIS POLLUTION CONTROL BOARD
December 16, 1982

TROJAN CORPORATION (WOLF LAKE), Petitioner,	)	
v.	)	PCB 82-23
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

ORDER OF THE BOARD (by D. Anderson):

On November 23, 1982 the Illinois Environmental Protection Agency (Agency) filed a motion for reconsideration of the Order and Opinion of the Board, adopted October 5 and 14, 1982, which granted Trojan Corporation (Trojan) a variance to allow open burning of explosive and explosive contaminated waste at Trojan's Wolf Lake facility. On December 2, 1982 Trojan filed a response to the motion.

The Board will grant the motion and modify the Opinion as discussed below.

The Agency has requested a specific ruling on two issues which underlie the finding of necessity for a variance from 35 Ill. Adm. Code 725.482: the size of the RCRA facility and whether buildings can be considered RCRA hazardous waste.

Section 720.110 defines "facility" as all contiguous land and structures. There is no express requirement that all land be owned in fee simple absolute. Leases of business property are common and the Board will not adopt a construction which would prohibit inclusion of leaseholds in RCRA facilities.

The buildings became "waste" at the time they were abandoned (Section 721.102). They are "hazardous" because they meet the characteristic of ignitability in that they are capable of causing fire through friction or spontaneous chemical changes (Section 721.121).

The hazardous nature of the buildings can also be deduced from the anti-dilution rule: that a mixture of a hazardous and non-hazardous waste is hazardous. The explosives are obviously hazardous. When the explosives are mixed with the buildings in such a way that they cannot be separated, while the explosives retain their hazardous nature, the mixture becomes hazardous.

If the buildings were successfully dismantled and trucked to any landfill, therewould be a danger of hot loads, fires or explosions during compaction and spontaneous ignition of underground fires in the completed landfill in years to come. The manifest system would be needed at a minimum to alert the operator to these problems.

The Agency takes the position that the Board cannot grant variances from the RCRA regulations. The Agency quotes Sections 3006 and 3009 of the RCRA Act (42 USC 6926 and 6929) and Section 35 of the Environmental Protection Act (Act).

Sections 3006 and 3009 of the RCRA Act, and Section 22.4 of the Act, refer to adoption of a program by the Board, and its approval by USEPA. "Equivalence" and "identical in substance" relate to the program as a whole and are considered at the time of adoption and approval. They lose their meaning when applied to individual cases after the program has been adopted and approved.

The variance mechanism derives from the Act as implemented by 35 Ill. Adm. Code 104. Unless specifically excluded, it applies to all Board rules, and as such, was a part of the RCRA application and approval.

Any regulatory system needs a safety valve to resolve situations which do not fit into the scheme correctly. In Illinois' two agency system, the Agency is not able to issue any permit which departs from the letter of Board regulations. The variance mechanism is essential to this system.

The Trojan case is an example of what would happen if the RCRA rules were adopted without a variance mechanism: Section 725.482 would absolutely prohibit the burning of existing explosive contaminated buildings or piles of unstable explosive waste located too close to the property line. These would have to remain for future generations to worry about in any facility closure. This is diametrically opposite to the intent of RCRA.

The Agency contends that the introductory paragraph of Section 35 of the Act absolutely prohibits variances from the RCRA rules. However, this paragraph also references the Clean Water Act and the Safe Drinking Water Act. Variances from 35 Ill. Adm. Code Subtitles C and F are commonly granted in spite of this language.

The Agency apparently takes the position that this facility is not subject to the RCRA rules at all and that no variance is necessary. The Board is not prepared to carve such an exception in this, the first case to come before it under the RCRA rules.

This facility is clearly engaged in the storage and disposal of hazardous waste. It has the potential to cause serious future problems if it were abandoned without proper closure which will be required under the RCRA program.

It should be noted that the RCRA rules became effective after the filing of the petition in this matter. The Board felt obliged to address the RCRA issues fully even though they were not raised by the variance petition. It would have worked an unfair hardship to have required an amended petition to deal with new regulations effective in the midst of a case with a decision date.

By way of contrast, the air quality standards were in place long before the petition was filed. Rather than request a variance from them, Trojan contended that it would not cause violation of the air quality standards. Trojan did not amend its variance request after the Agency contested its assertion of compliance. This apparently resulted from a conscious decision by Trojan that it would rather have its variance from Rule 505 now, and take its changes with enforcement should it, in fact, cause violation of air quality standards, rather than wait for the additional SIP revision which would be required if a variance were granted from the air quality standards.

The Agency has also contended that the Board's doubts about the practicality of partial burns in place in the ponds is not supported by the record in light of the previous use at Marion. The Board notes that this burning was conducted in violation of the conditions of the variance in PCB 79-150, 35 PCB 331,415, September 6 and 20, 1979. This explosive was to have been removed from the ponds, allowed to dry and burned on straw beds.

As noted in the Opinion, the Board has doubts about the safety and environmental desirability of partial burns in place in the ponds. Evidence is weak both in support of and against this variance condition. The Board declines to order Trojan to do something which it suspects may be a more dangerous and less environmentally desirable alternative. The Board's Order allows Trojan to conduct the burning as planned, and allows enforcement for any violation of air quality standards which may occur whether partial burnings are undertaken or not.

The Board acknowledges the error on page 6 of the Opinion and will delete the reference to the 85 pounds of CO per ton and the ten-fold reduction in emissions from prescription burning. However, the 8.3 pound figure is correct and the environmental impact of putting these amounts of CO and TSP over an uninhabited area is minimal compared with the advantages from cleaning up a hazardous waste site.

The Board will hereby allow the Agency to file its motion after the time specified.

The motion for reconsideration is granted; the Opinion is modified as noted.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16 day of December, 1982 by a vote of ____.

Christan L. Moffett, Clerk
Illinois Pollution Control Board