

ILLINOIS POLLUTION CONTROL BOARD
January 7, 1988

DEL MONTE CORPORATION (Can)
Manufacturing Plant No. 115),)
)
Petitioner,)
)
v.) PCB 87-147
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MR. JAMES F. WARCHALL AND MS. LAURA L. LEONARD, SIDLEY & AUSTIN,
APPEARED ON BEHALF OF PETITIONER.

MR. WILLIAM D. INGERSOLL APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon a Petition for Variance filed October 1, 1987, by Del Monte Corporation ("Del Monte") pertaining to Del Monte's Can Manufacturing Plant No. 115 located in Rochelle, Ogle County. Del Monte requests variance through June 30, 1988, from the can coating limitations found at 35 Ill. Adm. Code 215.204(b)(1), (2), and (6). The three coating limitations in question pertain to sheet basecoatings, exterior basecoatings, and end sealing compound coatings.

Del Monte currently uses coatings which are compliant with respect to Section 215.204(b). However, Del Monte contends that experience with the compliant coatings has shown them to provide a product of unacceptable quality. Petitioner therefore desires to revert to the use of non-compliant coatings, and to achieve compliance by the alternative methods of use of an afterburner and internal offsets, pursuant to 35 Ill. Adm. Code 215.205 and 215.207. Grant of variance would allow Petitioner to use non-compliant coatings during the time the afterburner is being installed and tested.

On November 9, 1987, the Illinois Environmental Protection Agency ("Agency") filed its recommendation ("Rec.") that the variance be granted, subject to conditions. Hearing was held in Rochelle on December 10, 1987. Several members of the public attended the hearing, and one, Mr. Henry McDermott, presented testimony.

On December 14, 1987, Del Monte filed a Motion for Expedited Review, requesting a decision on this matter no later than the Board's January 7, 1988, meeting. That motion is hereby granted.

Petitioner manufactures can bodies and ends for distribution to various Del Monte food processing facilities throughout the United States. Approximately 193 people are employed in the can manufacturing operation.

An essential process in the manufacture of cans intended to contain food is the application of coatings to the interiors and exteriors of the cans. Interior coatings minimize or prevent chemical reactions between the can metal and the food, thus assuring proper quality of the food. Exterior coatings provide corrosion resistance during food processing operations and ensure an adequate external shelf life for the product. A further process consists of adding an end sealing coating compound which provides a vacuum seal for the assembled cans. The various coatings must comply with Federal Food and Drug Administration and Department of Agriculture regulations and any state counterparts. In addition, the coatings must be compatible with the specific food product to be stored.

Coatings adequate to protect food products and satisfy federal and state food packaging requirements historically have contained relatively high concentrations of volatile organic material ("VOM"). Nevertheless, subsequent to adoption of 35 Ill. Adm. Code 215.204(b) Del Monte switched to certain low-VOM coatings in order to achieve compliance with that regulation. Del Monte now believes that the low-VOM coatings provide an inferior product subject to unacceptable rust, staining, and, in the case of the end sealant, loss of vacuum (see Exhibits 1A-1H). Del Monte accordingly wishes to resume use of the conventional higher-VOM coatings, and to achieve compliance by the alternative method of afterburner incineration of coatings emissions coupled with use of internal offsets.

Del Monte has undertaken steps to procure, install, and operate the necessary afterburner, and has applied to the Agency for the requisite construction permit (R. at 17; Ex. 3). Del Monte contends that it is making every effort to expedite operation of the afterburner, and believes that this may be achieved as early as April, 1988 (R. at 18). The afterburner would receive emissions from Del Monte's two existing sheet coatings lines¹, and is projected to have an overall 81% overall efficiency (R. at 19). Emissions from end seal operations would not be controlled, but Del Monte contends that it can achieve compliance through use of an internal offset using credits from

¹ Del Monte also plans to install a third coating line which will be vented to the afterburner. Del Monte stipulates that the new line will not be used until after the afterburner is in operation (R. at 17). The Agency recommends that this stipulation be included as a condition of the variance (Rec. at 7).

reduced emissions after the afterburner is operational (R. at 20; Ex. 6).

Del Monte contends that reversion to conventional coatings would produce an actual emission of 35.1 tons of VOM over the four-month period of variance prior to April, 1988 (R. at 18). Thereafter, with the afterburner in place, annual emissions would occur at a rate 154.8 tons/yr less than allowable emissions (R. at 19). Because all of the excess emissions would occur outside of the ozone season, and because Ogle County is an ozone-attainment county, Del Monte contends that the grant of variance would have minimal environmental impact.

Del Monte contends that an arbitrary or unreasonable hardship would be imposed absent a grant of variance on the grounds of inability to meet quality control standards, loss of business due to customer dissatisfaction, and potential impact on the local economy, in which Del Monte is a major employer. In weighing of these factors, the Agency requests the Board to also consider Del Monte's past compliance efforts:

This is not a case of a company ignoring regulatory obligations. Petitioner did receive some earlier variance relief. But, through its diligence, came into compliance and has remained in compliance. Unfortunately, production experience shows that another compliance technology is more appropriate. Even now, Petitioner is not ignoring its obligation, but wishes to use coatings which it knows will achieve customer satisfaction while installing add-on control equipment. (Rec. at 4)

In addressing the matter of the consistency of the proposed variance with federal law, the Agency notes:

The can coating limitations were promulgated as part of the RACT I proceedings and have been approved by the USEPA as part of the Illinois State Implementation Plan ("SIP"). Therefore, a variance granted by the Board in this case must be submitted to the USEPA as a revision to the SIP.

Since Petitioner's plant is located in an ozone attainment area, most of the difficulties in gaining approval for RACT relaxations are not present here. Particularly, the December 31, 1987 deadline of Section 172 of the Clean Air Act does not apply. Since the variance would not endanger the maintenance of the NAAQS for ozone in the area, it is expected that the variance would be approvable as a SIP revision. (Rec. at 3-4)

In view of the record presented in this matter, the Board finds that Petitioner would incur an arbitrary or unreasonable hardship, not justified by the environmental impact, if variance were denied. The Board will accordingly grant the variance, subject to conditions as recommended by the Agency. The conditions are intended "to see that compliance be achieved as soon as possible and thereby minimize environmental impact during the 1988 ozone season" (Rec. at 6).

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

ORDER

Petitioner, Del Monte Corporation, is hereby granted variance from 35 Ill. Adm. Code 215.204(b)(1), 215.204(b)(2), and 215.204(b)(6) for its Can Manufacturing Plant No. 115, subject to the following conditions:

1. Variance shall begin on October 1, 1987, and shall extend though June 30, 1988.
2. During the period of variance Petitioner shall not cause or allow the emission of volatile organic material to exceed the following limitations on coating materials, excluding water, delivered to the coating applicator:

Sheet basecoat	5.64 lb/gal
Exterior basecoat	4.68 lb/gal
End sealing compound coat	4.0 lb/gal

3. Within 50 days of this variance order, and at monthly intervals thereafter, Petitioner shall submit reports of all coating usage, including VOM content, on a daily basis at its Can Manufacturing Plant No. 115 to the following:

Variance Compliance Manager
Division of Air Pollution Control
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Within 50 days of this variance order, Petitioner shall submit the necessary construction permit applications for the proposed new coating line and the afterburner control equipment. Within 10 days of the issuance of these construction permits, Petitioner shall commence construction of the afterburner. If the permit applications have been made in advance of the 50 day deadline, and permits have been granted prior to the schedule contained herein, then construction shall

commence within 10 days of the issuance of the construction permits or within 50 days of this variance order, whichever is later in time.

5. The new coating line shall not be operated until the afterburner is installed and operational.
6. Within 45 days of the date of this Order, Petitioner shall execute and forward to William D. Ingersoll, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being 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 enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 87-147, January 7, 1988.

Petitioner

Authorized Agent


Title

Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111¹/₂ 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 7th day of January, 1988, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board