

ILLINOIS POLLUTION CONTROL BOARD
January 26, 1984

RHEEM MANUFACTURING COMPANY,)
CONTAINER DIVISION,)
)
) Petitioner,)
)
) v.) PCB 83-79
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
) Respondent.)

MS. DIXIE L. LASWELL APPEARED ON BEHALF OF RHEEM MANUFACTURING COMPANY, CONTAINER DIVISION.

MR. PETER E. ORLINSKY APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board upon a June 29, 1983, petition for variance filed by Rheem Manufacturing Company, Container Division ("Rheem"); as amended August 29, 1983. The company has requested a variance from Rule 104(h)(1), Rule 205(j)(1) and Rule 205(n)(1)(j) of Chapter 2: Air Pollution, to allow it to delay compliance with the emission limitation for volatile organic compounds (VOCs) discharged from its steel drum and pail coating lines.

The recent codification of applicable rules to 35 Illinois Administrative Code is as follows:

<u>Rule</u>	<u>Section</u>
104(h)(1)	215.212
205(j)(1)	215.211 (a)
205(n)(1)(j)	215.204 (j)

On October 26, 1983, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that variance be granted subject to certain conditions. Hearing was held on November 18, 1983.

At the January 12, 1984 regular Board meeting, this case was on the Board's agenda for discussion and was discussed at that meeting. Pursuant to Section 38 of the Environmental Protection Act, and extensions previously filed by Rheem, final Board action is due on or before January 27, 1984. Late January 23, 1984, a letter from Rheem's counsel was delivered to each Board member. That letter addressed the merits of the case, and specifically the discussion by the Board at the January 12, 1984 meeting.

This highly unusual action by Rheem creates two problems. First, the letter did not follow 35 Ill. Adm. Code Part 101, specifically Section 101.103 and 101.104. And, although the letter did include the name of the Agency attorney on the distribution list, no proof of service was filed as required by Section 103.123(b).

The second problem concerns timing. By providing a letter to the individual Board members three days before the decision deadline and not providing a waiver of the deadline, Rheem has effectively precluded an Agency response. If the Board allows a response time, the variance may issue by operation of law (Section 38 of the Act). However Rheem's letter contains no new facts or arguments beyond those of the Petition and Amended Petition, and therefore should not prejudice the Agency's position. Therefore, to avoid the appearance of ex parte contact in violation of Section 101.121(a), the Board hereby enters a copy of that letter into the record of this case as a public comment.

Rheem owns and operates a facility at 7600 South Kedzie Avenue, Chicago, Illinois 60652, which manufactures steel drums and pails. Rheem indicated that by the end of 1983, it would discontinue pail manufacture at its Chicago facility (Pet. p.2). The steel drums are built to order for customers and are used to ship and store such materials as insecticides, fungicides, poison, flammable liquids and food. Since the containers are used for hazardous materials, they are regulated by the U.S. Department of Transportation and by the Illinois Department of Transportation (Pet. p.6). Field testing is required prior to the use of any new coating material (Pet. p.6).

The manufacturing process involves the application of an exterior coating and subsequent oven drying. After the steel drum is formed, the interior coating is spray applied and oven dried. The coating application and drying processes are the subject of the present variance request.

Since 1978, Rheem has been modifying processes and working with suppliers to develop acceptable substitute coatings. Among the options studied are: use of high

solids, water based and powder coatings, ultra violet curing, electrostatic precipitation, afterburners, vapor recovery and carbon adsorption. To date, efforts have been partially successful but have not produced solutions to achieve compliance with Section 215.204(j) by December 31, 1983 (Rec. ¶ 7). The alternate methods have failed for several reasons: the resultant product was unacceptable, installation and maintenance costs were prohibitive, space limitations prevented additional equipment, and dangers of explosion would be created (Rec. ¶ 7).

Rheem proposes to achieve compliance by reformulating as many of its coatings as possible to high solids and water based coatings. As soon as each reformulated coating meets with customer and governmental approval, Rheem plans to introduce it into production. Included in the variance petition is a list of completed and ongoing machinery and equipment modifications (Exhibit 3).

Based upon these facts, the Board finds that Rheem has been diligently attempting to comply with the VOC limitations. Furthermore, it was anticipated that when the more restrictive standards adopted in 1982, came into effect, some facilities would be forced to seek variances until the standards could be met (R 80-5, Opinion, p.21, October 5, 1982, 49 PCB 87).

The only available methods to achieve compliance are, (1) the installation of expensive equipment which would become obsolete when reformulation is developed completely, and (2) reformulation. The technology for acceptable reformulation has been partially developed and is being funded and researched (Rec. ¶ 7). Considering these facts, the Board will not impose substantial costs upon the Petitioner to attain immediate compliance when new technology being developed during the variance period would allow compliance at a much lower cost.

35 Ill. Adm. Code 104.121(g) and 104.122(a) requires Variance Petitions to contain information on environmental impact and consistency with federal law as follows:

"an assessment, with supporting factual information, of the environmental impact that the variance will impose on human, plant and animal life in the affected area, including, where applicable, data describing the existing air and water quality which the discharge may affect". (Section 104.121(g)).

All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code, Subtitle B, Ch. I (prior to codification, Subtitle B, Chapter I was Ch. 2: Air

Pollution), shall indicate whether the Board may grant the requested relief consistent with the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal regulations adopted pursuant thereto. (Section 104.122(a)).

Rheem has supplied this information:

"Petitioner believes that its actions, as described herein, fully meet the requirements of the Clean Air Act, 42 U.S.C. §7401, et seq. Based upon its solvent usage data, the twenty-percent reduction in emissions from the shutdown of the equipment associated with the pail coating operation and because there were no violations of the ozone standard in Illinois in 1982, the grant of this petition for variance until December 31, 1987, will not significantly interfere with attainment or maintenance of the National Ambient Air Quality Standard for ozone" (Pet. par. 10).

"The grant of this petition for variance will not harm the public. The petitioner's operations are currently in compliance with Rule 205(f), and, based upon 1982 production, emissions of volatile organic materials will be further reduced by twenty percent due to the shutdown of the equipment associated with pail coating operation. Furthermore, there were no violations of the health-related ozone standard in Illinois in 1982." (Pet. par. 12).

The Agency recommended that the variance be granted based on certain assumptions:

For the following reasons, the Agency agrees that a denial of the requested variance would constitute an arbitrary and unreasonable hardship:

* * *

C. Closing the pail production line will decrease total plant VOC emission by approximately 20%. (Am. Rec. ¶ 11).

Each of the preceding statements is based on the 1982 total VOC emissions (310,000 lbs.;Pet. p.4) being reduced by 20% to 240,000 lbs.* (Pet. p.4).

* The Board notes that the numbers in Rheem's petition (305,036.00 lbs and 243,745.30 lbs) contain 8 significant digits. However they are derived by multiplication and addition from numbers having 2 significant digits (Pet. p. 1, Ex. 1). Therefore the Board will round off those numbers to two significant figures.

Thus, it is obvious that both Rheem's petition for variance and the Agency's amended recommendation conclude that air quality and the environment will not be adversely impacted by emissions of 240,000 lbs. of VOC per year. However, in its amended petition and the January 23, 1984 letter to the individual Board members, Rheem requests a limitation of 4,000 lbs./8 hour day. Presuming one shift, five days a week and 52 weeks per year this equals over one million pounds of VOC per year. There was no evidence produced in this case from which the Board can conclude that emissions of over one million pounds of VOC per year will not impair public health or air quality.

Section 35 of the Environmental Protection Act only allows the Board to grant variances to the extent consistent with the Clean Air Act, and regulations pursuant thereto. Rheem asserted and the Board can conclude the federal ambient air quality standards will not be impaired at 240,000 lbs/yr (Pet. ¶ 10 & 12), but not at one million. If Rheem wishes to operate at more than 80% of the 1982 production, it must demonstrate that the increased emissions will not violate the Clean Air Act.

Therefore the Board will grant a variance up to 240,000 lbs. of VOC per year. If Rheem desires a variance for the larger emissions it may file a petition demonstrating that one million pounds of VOC per year is consistent with federal law and will not cause adverse environmental impact. The Board has previously imposed maximum emission limitations in such cases The Meyercord Co. v. IEPA, 51 PCB 253, March 10, 1983, see also Moore American Graphics v. IEPA, PCB 83-1, April 21, 1983.

Rheem has requested a variance from Section 215.212 (Compliance Plan) and Section 215.211 (a) (Compliance Dates). Both Sections articulate deadline obligations for those subject to the substantive rule, Section 215.204(j). The Board is imposing as a condition of the variance, a compliance program submission schedule and a compliance date of December 31, 1985.

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

ORDER

Rheem Manufacturing Company, Container Division is hereby granted a variance from Section 215.204(j) 215.211 (a) and 215.212 subject to the following conditions:

1. This variance shall expire on December 31, 1985.
2. Rheem Manufacturing Company, Container Division shall expeditiously proceed with the development and implementation of coating materials which have a VOC content less than the presently used material. During the period of this variance (1) the average VOC content of exterior coating, interior coating and air dried coating shall not exceed 3.86 lb./gal., 4.99 lb./gal. and 4.76 lb./gal. respectively, and (2) the total VOC emission shall not exceed 240,000 lb./year.
3. No later than 28 days from executing the certificate, Rheem shall submit to the Agency a compliance plan in accordance with 35 Ill. Adm. Code 201 Subpart H, including a project completion schedule. Every third month thereafter Rheem shall submit written reports to the Agency detailing all progress made in achieving compliance with 35 Ill. Adm. Code 215.204(j). Said reports shall include information on the quantity and VOC content of all coatings utilized during the reporting period, a description of the status of the reformulation program, and any other information which may be requested by the Agency. The reports shall be sent to the following addresses:

Environmental Protection Agency
Division of Air Pollution Control
Control Programs Coordinator
2200 Churchill Road
Springfield, Illinois 62706

Environmental Protection Agency
Division of Air Pollution Control
Region 1, Field Operations Section
1701 South First Avenue
Maywood, Illinois 60153

4. Within 28 days of the Board's final Order herein, Petitioner shall apply to the Agency for all requisite operating permits pursuant to 35 Ill. Adm. Code 201.160.
5. Within 45 days of the Board's final Order herein, Petitioner shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. Said Certification shall be submitted to the Agency at the address

specified in paragraph 3. The 45 day period shall be held in abeyance during any period that this matter is being appealed. 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 83-79, dated January 26, 1984.

Petitioner

Authorized Agent

Title

Date

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 26th day of January, 1984 by a vote of 7-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board