ILLINOIS POLLUTION CONTROL BOARD
October 9, 1975

UNARCO INDUSTRIES, INC.	)	
Petitioner,	)	
v.	)	PCB 75-289
ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Unarco Industries (Petitioner), filed a variance petition on July 25, 1975 seeking relief from Rule 203(a) of the Board's Air Pollution Control Regulations, Chapter 2 (Air Rules) until May 15, 1976. The Illinois Environmental Protection Agency (Agency) filed its Recommendation proposing a variance grant, on September 8, 1975. No hearing was held.

Petitioner engages in the manufacture of porcelain steel sinks and their porcelain component parts. Its facility is located approximately one-half mile west of the City of Paris, in Edgar County. New residential housing is located approximately 1/8 mile east of Petitioner's facility.

Petitioner's basic sink operation consists of the stamping of carbon and coil steel into sink basins, welding the basins together in pairs, welding in necessary auxiliary components, spray coating the units with porcelain frits, and firing the porcelain to achieve a finished surface. It is the porcelain spraying operation which fails to conform to Rule 203(a) of the Air Rules. During this operation, particulate discharge resulting from overspraying escapes the spray booth baffles and vestibule and enters the atmosphere via the booth's stack, 32 feet above ground level.

Petitioner states that the discharge from the spray booth unit occurs at a rate of 2.1 pounds per hour. The Agency notes in its Recommendation that as three units are normally in operation, the actual emission rate is 6.3 pounds per hour. The standard under Rule 203(a), is .53 pounds per hour.

The contaminant from Petitioner's stack is a finely milled porcelain enamel particulate. Petitioner contends that the particulate is quite heavy, with a specific gravity of 2.5, and therefore mostly remains near the point of emission in the center of the facility's roof. The Agency, however, states that a micron analysis reveals that 67% of the particulate is comprised of particles under 40 microns in size. The Agency indicates that particles of this size tend to remain airborne for longer periods of time and for greater distances than larger particles and hence will not remain very near the emission point. The Agency further notes that during an August 1, 1975 inspection, an Agency engineer observed porcelain enamel particulate emissions drifting from two booth stacks across and beyond the plant roof.

Petitioner states that it provides emission control on porcelain emissions by the use of the baffles and vestibule arrangement incorporated into the booth assemblies. Petitioner proposes to reduce its emissions to comply with the Rule 203(a) standard by installing a filtration system capable of capturing 96% to 99% of the particulate matter. Petitioner proposes to use either a multicyclone or baghouse collector. The program would clean approximately 90,000 standard cubic feet per minute, which would then be returned to the in-plant atmosphere. The Agency Recommendation indicates that both of the alternative filtration systems proposed by Petitioner are capable of producing compliance with Rule 203(c) assuming little or no porcelain frit fracture upon induction to the filters.

Petitioner has also supplied regional ambient air quality data for 1974, which indicates that the grant of a variance would not pose a hazard to either primary or secondary particulate standards.

The Agency Recommendation notes that this data comes from sampling sites at Bloomington and Champaign and is not conclusive as to the ambient air quality near Petitioner's plant in Paris. However, the Agency also states that given the small size of Petitioner's emissions and the general nature of the area, it agrees with Petitioner's assessment that a variance would not affect the air quality standards in the area around Petitioner's facility.

Both Petitioner and the Agency state that there have been no citizen complaints regarding Petitioner's emissions. Petitioner alleges that a denial of a variance would make it such to an arbitrary and unreasonable hardship. Petitioner alleges that if required to comply immediately with Rule 203(a) it would be forced to cease its porcelain application and consequently close its facility until control equipment will be installed. Petitioner alleges this would result in a layoff, a loss of approximately $1,000,000 in income, and a possible decision not to reopen the plant. However, as the Agency notes in its Recommendation, Petitioner has not substantiated these allegations with any data. Furthermore, the Board has consistently held, that denial of a variance does not constitute a shutdown. The Petitioner can still operate although subjecting itself to possible enforcement action (ABC Great States v. EPA, PCB 72-39; Flintkote Company v. EPA,, PCB 71-68; Commonwealth Edison v. EPA, PCB 72-91, 72-150).

The Agency states in its Recommendation that there is no reason why Petitioner could not have achieved compliance earlier. Petitioner now has all of its required permits other than those pertaining to the porcelain sink manufacturing process. However, Petitioner did not begin to submit any of its permit applications until two years after the applicable compliance date for the facility. It appears then, that any hardship to the Petitioner at this point is self-imposed.

Petitioner also failed to advance any arguments as to unavailability of controls or financial inability to install such controls prior to the mandated compliance date.

The Board has held that a hardship imposed by denying a variance is "not unreasonable and arbitrary", if it was earlier within the power of the Respondent to remedy, and is thus self-imposed (City of Danville v. EPA, PCB 72-335; GAF Corporation v. EPA, PCB 71-11.

Title 9, Section 35, of the Act provides that the Board may grant a variance whenever it is found, "...upon presentation of adequate proof...", that compliance will impose an arbitrary or unreasonable hardship.

The Board could find, based upon this record, that Petitioner has failed to establish beyond a mere assertion that the denial of a variance would impose such an arbitrary and unreasonable hardship and that it has not justified its failure to bring its facility into timely compliance.

The Petitioner shall be granted 60 days within which to submit additional materials, if any, bearing upon the hardship question and the apparent self-imposed delay. A waiver of the 90-day decision period set by statute shall be executed and filed with the Board on or before October 22, 1975. Failure to timely file the waiver shall result in the dismissal of this case and the denial of the variance because of the grounds already stated.

The Board notes in conclusion, that the Agency has stated in its Recommendation that it informed Petitioner on August 8, 1975 that Petitioner need not wait until the Board decision in the variance to begin its compliance program. The Agency indicates that based on the Agency modification of Petitioner's proposed compliance schedule, allowing adequate time for determination of supplier and costs, delivery, installation, and testing, Petitioner can be in compliance with Rule 203(a) by March 15, 1976.

ORDER

1. Petitioner shall have a 60-day period from the date of this Order to file additional material with the Board and Agency bearing upon the hardship and delay questions discussed in this Interim Opinion.

2. Petitioner shall on or before October 22, 1975 file with the Board a waiver of the 90-day decision period for an additional 90 days. Failure to timely file the waiver shall result in the denial of the variance for the reasons stated.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 9th day of October, 1975 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board