

ILLINOIS POLLUTION CONTROL BOARD

September 12, 1974

NATIONAL METALWARES, INC.            )  
    Petitioner,                        )  
                                      )  
    v.                                 )     PCB 74-239  
                                      )  
ENVIRONMENTAL PROTECTION AGENCY, )  
    Respondent.                        )

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

Petitioner, which manufactures and paints various parts for the furniture and appliance industry, filed on June 24, 1974, a variance request from Rule 205(f) of the Air Pollution Regulations (Chapter Two). Petitioner is located in a light industrial area with neighboring farms and residences at 900 North Russell Avenue, Aurora, Illinois. National Metalwares, Inc. requested a Variance "until such time that adequate supplies of exempt paints and solvents are available." Petitioner did not indicate whether alternative means of compliance with Rule 205(f) of Chapter Two had been investigated. Petitioner included in its petition letters from suppliers which stated that orders for exempt solvents could not be filled.

Rule 205(f) of Chapter Two limits the discharge of organic material into the atmosphere to no more than 8 pounds per hour from any single emission source. National Metalwares, Inc. specified in its Petition that 24 to 28 pounds per hour of photochemically reactive material are released into the air.

The Environmental Protection Agency (Agency) filed its Recommendation on August 12, 1974. The Agency recommended that the Variance be denied or, in the alternative, be granted only for six months and be subject to certain reporting and planning requirements. The Agency stated that although some citizens complained of the facility's odors, these individuals did not object to the granting of the Variance. The Agency premised its recommended denial on the following facts:

1. The Agency was unsure of the extent of Petitioner's efforts to secure exempt solvents.

2. The lack of investigation of alternative means of compliance by the Petitioner meant to the Agency that arbitrary or unreasonable hardship had not been proved. Regarding the issue of alternative compliance methods, the Agency stated: "9. When representatives of Petitioner were asked about alternative compliance standards under Rule 205(f)(1), they replied that after-burners were never seriously considered because of the heavy capital expenditure that would be incurred. Also, Petitioner believed that it would have difficulty acquiring a fuel supply allocation. How-

ever, Petitioner stated that it would be willing to achieve compliance by means of water-based paints or by the alternative standards of Rule 205(f)(1), if Petitioner finds that it has no other alternative."

3. Since area residents were complaining of odors, Petitioner should make renewed efforts to alleviate the problem.

We hold that Petitioner is entitled to a short variance from Rule 205(f) of Chapter Two. The Agency's arguments are sound and deserve comment. First, recent shortages of exempt solvents in the industry are well-known. The letters from suppliers submitted by Petitioner reinforce this position. Furthermore, in the absence of contrary evidence, we presume that Petitioner's allegations were made in good faith. Second, Petitioner has failed to fully investigate alternative means of compliance as noted by the Agency (point 2, above) and as demanded by our Procedural Rule 401 (b). However, in dealing with variance requests under 205(f), the Board has recognized the suddenness of the exempt solvent shortage and the possible lack of time available to test alternate compliance mechanisms. In Paragraph 9 quoted from the Agency Recommendation, Petitioner indicates that some investigation has been undertaken and expresses a willingness to achieve compliance with 205(f). Also, no citizen objection was voiced to the grant of the Variance. A short variance coupled with Agency surveillance is the best method to achieve a satisfactory abatement program. Third, efforts to alleviate the odor pollution problem will not be delayed by the grant of this Variance. Possible control equipment - including the installation of an afterburner - will be included in the requirements for reporting to the Agency.

The Board is reevaluating its position on the grant of variances from Rule 205(f) of Chapter Two. The test of arbitrary and unreasonable hardship involves a balancing approach and will change with the circumstances. Stricter scrutiny of these variance requests can be expected in the future for the following reasons. First, in the Chicago area, the recent wave of ozone alerts means that additional abatement procedures are necessary to protect the health of the public. Second, the shortage of exempt solvents has existed for almost one year. Companies have had sufficient time to either find other sources or undertake alternate methods of compliance with Rule 205(f).

This constitutes the findings of fact and conclusions of law of the Board.

#### ORDER

IT IS THE ORDER of the Pollution Control Board that Petitioner is granted a Variance from Rule 205(f) of Chapter Two until December 31, 1974, subject to the following conditions:

- (a) Petitioner shall utilize as much non-photo-chemically reactive materials in its Ransberg painting system as can be furnished by suppliers.

- (b) Petitioner shall submit reports for the months of September, October, November, and December, 1974, to:

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

The monthly reports should include the total amount of solvents used, the nature and amount of non-exempt solvents used, the nature and amount of exempt solvents used, the amount and nature of exempt solvents purchased (indicating the supplier), the amount and nature of non-exempt solvents purchased (indicating the supplier), and the amount and nature of solvents in inventory at the beginning of each month.

- (c) Within 2 months of the date of this Board Order, Petitioner shall submit to the Agency a modified compliance plan to replace that which has been nullified by shortages. This plan may:
- i. Achieve compliance at the expiration of the Variance by replacement of photo-chemically reactive solvents with non-reactive solvents demonstrated to be readily available; or
  - ii. Achieve compliance at the expiration of the Variance by qualification under the Alternative Standard of Rule 205(f)(1); or
  - iii. Achieve compliance by May 30, 1975, under the provisions of Rule 205(f)(2)(D).
- (d) The compliance plan under (c) shall indicate the method to be used to abate odors emitted from Petitioner's facility.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 12<sup>th</sup> day of September, 1974, by a vote of 5 to 0.

  
Christan L. Moffett