

ILLINOIS POLLUTION CONTROL BOARD  
July 11, 1985

NASH BROTHERS COMPANY )  
                          ) Petitioner, )  
                          ) )  
                          ) v. ) PCB 84-182  
                          ) )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY )  
                          ) Respondent. )

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

This matter comes before the Board upon a petition for variance from the volatile organic materials emission limitation of 35 Ill. Adm. Code 215.204(j)(3) filed by Nash Brothers Company ("Nash Brothers") on December 21, 1984, and amended February 19, 1985. Nash Brothers' amended petition seeks variance until August 31, 1986, and requests the Board allow the same amount of time for Petitioner's acquisition of construction and operating permits. The Board received a letter on January 7, 1985, from a resident living near Petitioner's property who requested that, due to his concern over the possible granting of a variance in this case, a hearing be held to determine if such action would be in the best interests of the community.

The Environmental Protection Agency ("Agency") filed its recommendation on April 23, 1985, concluding that variance should be conditionally granted to Nash Brothers. Hearing was held on May 24, 1985, and was attended by both parties, a number of Nash Brothers employees, and environmentalist Ms. Gisela Topolski who initially questioned the variance but who eventually went on record at the hearing in support of granting the requested variance to Petitioner. Nash Brothers has twice waived the time for decision in this case, most recently until September 2, 1985.

Nash Brothers is engaged in the manufacture of engineered truck bumpers and metal welded truck parts at a plant in Will County, Illinois. Approximately 55 persons are employed at the facility, which is situated on 12 acres in a mostly open area 3.5 miles from the City of Joliet. Petitioner's manufacturing operation consists of transforming flat steel and aluminum into truck bumpers and parts, forty percent of which are then shipped out for chrome plating and sixty percent of which receive an application of primer paint at Nash Brothers' plant. Petitioner's painting process utilizes a flow coat technique whereby metal parts are moved by an overhead conveyor through an enclosed booth. Inside the booth a series of nozzles spray streams of primer paint which "flows" over the passing metal parts. The excess paint dripping off the parts drains into a sink at the bottom of the booth, is filtered and reused. From

the painting booth the parts are conveyed to a "flashoff enclosure", which operates to evaporate solvent and allow the paint to spread evenly over the parts. After flashoff the parts are then conveyed back to the plant where they are packed, stored, and shipped.

The impetus for Petitioner's variance request is its inability to the present time, notwithstanding the expenditure of much effort in good faith, to maintain emissions of volatile organic materials (VOM) from its plant at or below the level allowed by Ill. Adm. Code 215.204(j)(3). The primer paint and solvent used by Nash Brothers contain VOM, and emissions occur during the spray painting, flashoff, and drying sequences of the production process. These emissions are vented to the atmosphere via two roof stacks and an opening on the roof-mounted dryer oven. Section 215.204(j)(3) states that VOM emissions from the application of extreme performance coatings to miscellaneous metal parts and products are not to exceed 3.5 lbs/gal (.42 kg/l), excluding water, delivered to the coating applicator. Petitioner has determined, and the Agency does not dispute, that it presently uses approximately 8.6 gallons of primer paint per hour. Since Section 215.204(j)(3) limits VOM emissions to 3.5 lbs/gal., Nash Brothers is allowed a VOM emission rate of 30.10 lbs/hr. However, Petitioner has determined, and the Agency does not dispute, that its actual VOM emission rate is approximately 39 lbs/hr, almost 9 lbs/hr over that level.

35 Ill. Adm. Code 215.211(a) (1) provides that VOM emission sources subject to Section 215.204(j) were to be in compliance with the latter rule by December 31, 1983. Nash Brothers began taking the steps necessary to attain timely compliance well before the statutory deadline. It submitted a compliance plan to the Agency on May 9, 1983, which the Agency approved on June 9, 1983. This plan anticipated that compliance would be achieved by the statutory deadline through Nash Brothers' use of a low solvent primer manufactured by the W.C. Richards Company. Nash Brothers extensively tested this paint, and found that its use would bring Petitioner within the VOM emission limitations of Section 215.204(j)(3). However, on December 19, 1983, Nash Brothers was notified by its paint supplier that this particular paint, which contained the solvent 1,1,1 trichlorethane, caused the formation of phosphene gas when vapors from the solvent came into contact with an open flame. Nash Brothers was also informed that upon cooling, the phosphene gas would condense and create hydrochloric acid. Both phosphene gas and hydrochloric acid are toxic substances. Upon receipt of this information, Petitioner was forced to halt testing of the paint, which thereby eliminated any possibility of bringing its operations into compliance with VOM emission limitations by December 31, 1983.

Shortly thereafter, Nash Brothers began testing paints supplied by three other companies in the hope of finding one that would satisfy its requirements. Tests performed in February, 1984 showed that a water soluble reducible paint produced by the

Federated Paint Company would probably allow Nash Brothers to satisfy Section 215.204(j)(3). However, this paint was not able to meet customer specifications, so testing was halted on it in May, 1984. Testing continued on other paints until July 16, 1984, when a fire occurred in the drying oven's chamber causing a shutdown of Petitioner's paint operations. After repairs were made to the oven, painting and testing resumed in September, 1984. On November 8, 1984, another fire occurred in the chamber of the drying oven, and repair or replacement of the oven was expected to be completed in June 1985. After the drying oven returns to operation, Nash Brothers intends to resume testing paints until one is found which will satisfy both Section 215.204(j)(3) and customer specifications.

Following the November 8, 1984 fire, and at the instigation of the Agency, Nash Brothers filed its original petition for variance from Section 215.104(j)(3) on December 21, 1984. At that time Petitioner requested the Board to grant it variance from the VOM emission limitation until November 30, 1985, and to extend to the same date the time by which Nash Brothers must obtain construction and operating permits from the Agency. Nash Brothers filed its amended petition for variance on February 19, 1985, requesting that the Board allow Petitioner until August 31, 1986, to attain compliance with Section 215.204(j)(3) and obtain construction and operating permits from the Agency.

The Agency submitted its recommendation on April 23, 1985, finding that variance until August 31, 1986, is warranted in this case as Nash Brothers has demonstrated, to the Agency's satisfaction, that mandating compliance with Section 215.204(j)(3) at this time would pose an unreasonable and arbitrary hardship to the Petitioner. The Agency would condition the variance on submittal of quarterly reports by Nash Brothers delineating progress made in achieving compliance with Section 215.204(j)(3), and on the submittal by Nash Brothers to the Agency no later than March 1, 1986, of an alternative plan to install the equipment necessary to control Petitioner's VOM emissions if Nash Brothers does not reasonably expect to achieve compliance with Section 215.204(j)(3) by August 31, 1986.

The Board is persuaded that variance is warranted in this case, and hereby grants Nash Brothers' petition for variance from Section 215.204(j)(3), subject to the conditions outlined below. At every step along the way Nash Brothers has diligently and in good faith attempted to comply with the VOM emissions limitation of Section 215.204(j)(3), and except for a series of unforeseen setbacks could have probably achieved compliance several different times over the past two years.

Condition "A" (below) is intended to alleviate two concerns the Board has in granting variance from regulatory standards. First, there is a general concern that a variance not be "open-ended", i.e. allow the holder of the variance to emit as large a quantity of a substance as he pleases simply because he possesses

a variance. On the other hand, the Board does not wish to hinder Petitioner's production capabilities by placing a "cap" on the total amount of lbs/hr. of VOM Nash Brothers can emit. By requiring Petitioner to utilize primer paint having VOM content less than or equal to those used in determining Petitioner's actual VOM emission rate to be 39 lbs/hr., both concerns should be eliminated.

Nash Brothers' plant is located in Will County, an attainment area for ozone. The Board notes that it is aware that airborne substances, though not the cause of violations at the location emitted, can be transported and ultimately contribute to violations observed in other areas. However, given the small volume of VOM Nash Brothers will be emitting during the variance period, the anticipated environmental impact is small relative to the cost of immediate compliance.

The Board also concurs with the Agency's determination that denial of Nash Brothers' petition for variance would result in an arbitrary and unreasonable hardship to Petitioner. Such denial of variance relief would force Nash Brothers to presently install VOM control equipment, which would be an unreasonable result given the possibility of Petitioner successfully reformulating a primer paint and the negligible environmental impact resulting from Nash Brothers' VOM emissions.

Since Section 215.204(j) has not yet been approved by the United States Environmental Protection Agency ("USEPA") as part of the State Implementation Plan (SIP), Nash Brothers' variance does not have to be submitted to the USEPA as a revision to the Illinois SIP. Nevertheless, the Agency has stated that it believes this variance should be approvable as a SIP revision, and will, therefore, submit it as such at such time as USEPA approves Section 215.204(j), unless the variance has already expired by that time.

Regarding Petitioner's request for an extension of time to obtain construction and operating permits from the Agency, the processing of permit requests and the time frame in which it is conducted are wholly matters within the purview of the Agency. The Board does not perform functions rightfully within Agency discretion, and therefore, does not render an opinion on the issue of the time frame Nash Brothers faces in obtaining construction and operating permits.

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

ORDER

Nash Brothers Company is hereby granted variance from December 21, 1984 to August 31, 1986 from compliance with 35 Ill. Adm. Code 215.204(j)(3) subject to the following conditions:

- A. During the period of this variance Nash Brothers shall use primer paint(s) with VOM content less than or equal to those used in determining Petitioner's actual VOM emission rate to be 39 lbs/hr.
- B. Nash shall submit quarterly written reports to the Agency until August 31, 1986, detailing all progress made in achieving compliance with the VOM emission limitation of 35 Ill. Code 215.204(j)(3). The first quarterly report will be due thirty days from the date of the Board order granting the variance. Such reports shall contain monthly information on the quantity and solvent content of the primer utilized during the reporting period which reflect the impact of reformulated materials on VOM emissions. These reports shall also describe in detail the progress made by Nash to develop a compliant primer during the proceeding three months, as well as the projected progress to be made in achieving compliance during the following quarter. The first quarterly report of 1985 shall include copies of material data sheets showing the composition (in terms of percentages of solid, solvent and water) of all primer which will be applied at the plant. All of the above information shall be submitted to the Agency at the following addresses:
  1. Manager, Permit Section Division of Air Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706
  2. Manager, Field Operations Sections, Division of Air Pollution Control, Illinois Environmental Protection Agency, 1701 South First Avenue, Suite 600, Maywood, Illinois 60153
- C. On or before March 1, 1986, Nash shall submit to the Agency at the addresses provided in Condition A above a program to install appropriate control technology which will bring its plant into compliance with the applicable VOM emission limitation if it does not reasonably expect to achieve compliance with that emission limitation by August 31, 1986, through utilization of low solvent or water based primer. The alternative compliance program shall provide for final compliance with the applicable VOM emission limitation by August 31, 1986. Nash shall comply with all applicable rules of the Illinois Pollution Control Board, including, but not limited to, 35 Ill. Adm. Code 201.142, in satisfying this variance condition.

D. Within forty-five (45) days after the date of the Board Order the Petitioner shall execute and send to :

Mr. Joseph R. Podlewski, Jr., Enforcement Attorney,  
Illinois Environmental Protection Agency, 2200  
Churchill Road, Springfield, Illinois 62706

a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions. This forty-five (45) day period shall be held in abeyance for any period which this matter is appealed. The form of the certificaiton shall be as follows:

CERTIFICATION

Nash Brothers Company hereby accepts and agrees to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 84-182 dated \_\_\_\_\_, 1985.

NASH BROTHERS COMPANY

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Member B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15<sup>th</sup> day of July, 1985, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board