

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 1987

JOLIET SAND AND GRAVEL COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-159  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Anderson):

On February 9, 1987, Joliet moved the Board to enter into the record of this proceeding a transcript attached to the motion. The transcript purports to be that "of the Board's deliberations" in this proceeding at the Board meeting held on February 5, 1987. Joliet asserts that this transcript is "relevant information" whose inclusion is required pursuant to 35 Ill. Adm. Code 101.107, and that Joliet wishes this transcript included for purposes of appeal.

The Appellate Court for the Third District, to which any appeal in this action would lie, has held that such transcripts are not properly part of the record on review. In Illinois Power Co. v. IPCB and IEPA, 100 Ill. App. 3d 528, 426 N.E.2d 1258, 1263 (1981), the court affirmed the Board's denial of a similar motion to complete the record by inclusion of a transcript of the Board's deliberations. The Court stated that:

"Several reasons exist why any transcript of such meeting is not part of the record for purposes of appeal. First, the opinions of individual Board members are personal in nature and not actions of the Board. Furthermore, such is not evidence. Also, the accuracy of the recorded information is disputed since a Board meeting, unlike a hearing before the Board, is not required to be recorded stenographically, or by another recording method (Ill. Rev. Stat. 1979, ch 111 1/2, par. 1005, 1032).

Furthermore, with respect to this particular transcript, the Board notes that the meeting was transcribed by a shorthand reporter of Joliet's choosing, and that the Board itself did not have the meeting recorded. While there is no other transcript with which to compare Joliet's, the Board challenges the accuracy of the recording and transcription of various words ascribed to

various individuals. The most glaring example of this occurs in the final line of the transcript at page 7, line 11, which reads "Mr. Flemal: It's done, for 60, thank you." From this it might appear that Dr. Flemal was announcing accomplishment of a task in consideration for 60 "somethings". In fact, Chairman Dumelle to whom this statement should have been attributed, was announcing adoption of the Opinion and Order by a vote of six to zero (6-0).

This pinpoints another defect in this transcript: it does not fully reflect all of the Board's deliberations during the afternoon session of its February 5 meeting. Prior to adjournment of the meeting, but after discussion of another agenda item and after Joliet's counsel and court reporter had left the room, Board Member Meyer sought and obtained leave of the Board for reconsideration of the matter, whereupon Mr. Meyer changed his vote to one of dissent.

Thus, even if this transcript were to be considered "evidence", the Board would deny entry of this inaccurate and incomplete document into the record. In short, the motion is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19<sup>th</sup> day of February, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 1987

DEERE AND COMPANY, )  
(Plow and Planter Works), )  
 )  
Petitioner, )  
 )  
v. ) PCB 86-162  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

JEFFREY C. FORT, MARTIN CRAIG, CHESTER & SONNENSCHNEIN, AND  
ELIZABETH O. SHAW, DEERE & COMPANY, APPEARED ON BEHALF OF  
PETITIONER.

WILLIAM D. INGERSOLL, ESQ., APPEARED ON BEHALF OF THE ILLINOIS  
ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on the October 2, 1986  
petition for variance and October 31, 1986 amended petition for  
variance filed by Deere & Company ("Deere"). Deere seeks  
variance from the requirements of 35 Ill. Adm. Code 215.204(k),  
215.211(b) and 215.212(c)\* for three flowcoaters located at its  
Plow and Planter Works in Moline, Illinois. The variance is  
requested for such time necessary for the Board to rule favorably  
on a request for a site-specific rule change (R87-1) or 18 months  
from the date of denial of such request. The Illinois  
Environmental Protection Agency ("Agency") filed its  
recommendation that variance be granted for a period of three and  
one-half years, subject to conditions, on December 22, 1986.  
Hearing was held on January 8, 1987 in Moline, Illinois.

Petitioner's facility is located on a narrow strip of land  
of 81 acres located between the Mississippi River and Third  
Avenue in Moline, Rock Island County, Illinois. The factory  
currently employs approximately 1300 persons. In the future,  
products manufactured at the Plow & Planter facility will consist  
of planters, hydraulic components and hardware. The facility  
currently has seven valid operating permits granted by the  
Agency. However, by the end of December 1987 only two paint

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\*Although the petition requests relief from 215.212(b), this is  
apparently a typographical error.

systems will remain at the facility; these are designated Department 62 and Department 88. Pet. at 2. Department 62 contains the three flowcoaters at issue in this variance; they are specifically referred to as the "green prime", "green topcoat" and "yellow topcoat" flowcoaters. Pet. at 1.

Paint systems in Department 62 share a common pre-paint washer and a common paint drying oven at 180° F. Parts to be painted green are routed through the green primer flowcoat unit, then to the paint drying oven. From the oven the parts are routed through the green finish coat flowcoat unit and thence back through the drying oven. Parts to be painted yellow pass through a yellow paint flowcoat and are dried in the common oven. Parts to be painted black are either routed to a black flowcoat unit and dried in the common oven or to a small black dip tank and dried in a separate oven. Under the variance, the green and yellow flowcoaters would continue to utilize solvent-based paints with solvent added for viscosity control. By December 31, 1987 the black flowcoater and black dip tank will have been converted to water-borne paints. Pet. at 3. The VOM emissions from the painting operations at the facility are exhausted through stacks to the atmosphere.

35 Ill. Adm. Code 215.204(k) provides for a limitation of 3.5 pounds of volatile organic matter per gallon (lb VOM/gal) for prime coating and 4.3 lb VOM/gal for the top coat. Section 215.211(b) requires compliance by December 31, 1987 and Section 215.212(c) requires submission of a compliance plan by December 31, 1986. Emissions from the three flowcoat operations at the Plow and Planter facility range from 5.1 to 5.9 pounds VOM per gallon of paint as applied. Based on these figures, Deere has calculated that its actual emissions are 91.7 tons VOM per year and its allowable emissions are 18.9 tons VOM per year for a total excess emissions of approximately 73 tons VOM per year. Pet. at 5.

Rock Island County is designated as an attainment area for ozone. The closest non-attainment areas are Chicago at 160 miles to the east and the St. Louis Metro-East (Illinois) area at 210 miles to the south. An ambient air monitor for ozone is located less than two miles east of Petitioner's facility. No violation of the ambient air quality standard for ozone has been recorded by this monitor since 1983. Rec. at 2. The Agency states that the nearest residence is located approximately one-fourth mile south of the main production and painting areas of the facility and that emissions from the facility have a detectable solvent odor. However, the Agency has no odor complaints on record. Rec. at 2.

Deere states that it has been unable to develop compliant coatings suitable for the flowcoaters in question. Deere states that the lowest cost option for achieving compliance is the

elimination of the flowcoaters and their replacement with alternate technology. Incineration and carbon adsorption were both rejected as more expensive than this approach. The cost of eliminating and replacing the flowcoaters is stated to be \$1,526,700 in capital and \$75,000 in annual operating and maintenance to achieve a reduction of 73 tons of VOM emissions annually. This translates into an annualized cost of \$5,617 per ton. The Agency did not strenuously object to the computation of this figure but did note that the 17.5% interest rate upon which the computation was made is much too high in today's economy. The Agency stated that nonetheless, even using a lower interest rate the cost per ton would appear to be unreasonable. Rec. at 3. Deere submits that implementation of this alternative, which it considers its best option, does not constitute reasonably available control technology (RACT). Consequently, Deere is pursuing site-specific regulatory relief in R87-1. Deere asserts that it would impose an arbitrary or unreasonable hardship to require compliance while it pursues regulatory relief. However, should the relief be denied, Deere has developed a technically feasible compliance plan which is capable of being fully implemented within eighteen (18) months.

Deere states that it has investigated many alternatives in an attempt to find a practicable solution to VOM compliance including the use of:

1. water-borne paint in flowcoaters
2. fume incineration
3. exempt solids
4. powder coating
5. electro-deposition
6. high solids net spray
7. water-borne dip

Each of these options was rejected, however, for reasons of appearance, performance, technical feasibility or economic reasonableness. See Pet. at 7-10.

#### Environmental Impact

Deere states that any environmental impact will be minimal since there will be no increase in emissions over historical levels. In fact, as a result of using water-borne and high solids paints where feasible, there will be an absolute decrease in emissions. In this regard, Deere notes that by December 31, 1987 all existing systems except the green prime, green topcoat

and yellow topcoat flowcoaters in Department 62 will have been eliminated or switched to compliant coatings.

Moreover, Deere noted at hearing that emissions at the facility have dropped from approximately 900 tons in 1980 to a projected level of 91 tons for 1987. This is approximately a 90% reduction in emission levels. R. at 14. Two other Deere facilities in the Quad-City area have also experienced significant drops in VOM emissions. One facility experienced a drop in emission levels from 990 tons in 1983 to approximately 420 tons projected for 1987 for a 58% to 60% reduction; the other has dropped from 1979 levels of 84 tons to 60 tons in 1986 for a 21% reduction. R. at 16-17. Overall, Deere estimates that a total 1,400 ton reduction in VOM emissions occurred over the 1980 to 1987 time period in its facilities alone in the Quad-Cities area. R. at 17.

Deere also noted that other VOM emission sources in the area have been closed or are projected to close shortly. These include: the International Harvester Farmall Tractor Plant, the American Air Filter facility, the Case International Rock Island facility and the Case International Bettendorf facility. R. at 20.

The Agency stated at hearing that this evidence coupled with the monitored data concerning ozone in the area indicates that the level of excess emissions that would be allowed by the granting of the variance would not adversely impact air quality in the Quad-Cities area and would not jeopardize the maintenance of the National Ambient Air Quality Standard for ozone. R. at 33.

The Board notes that both Petitioner and the Agency are careful to point out that the closest non-attainment areas are 160 miles east (Chicago) and 210 miles south (East St. Louis). Rec. at 2, Pet. at 2. While the Board is appreciative of the difficulties associated with determining the potential for ozone transport, it does not believe that such recitations demonstrate that transport is not occurring. However, since Deere has been successful in reducing VOM emissions by approximately 1400 tons over all its facilities in the Quad-Cities area over a seven year period, and at this facility from 900 tons per year to 91 tons per year. The Board finds that any environmental impact will be minimal. The Board finds that in light of the costs to Petitioner and the minimal environmental impact associated with granting the relief requested, that denial of the variance would constitute an arbitrary or unreasonable hardship. Accordingly, the Board will grant variance subject to conditions as suggested by the Agency.

ORDER

Deere & Company is hereby granted a variance from 35 Ill. Adm. Code Sections 215.211(b), 215.212(c), and 215.204(k) for its green prime, green topcoat and yellow topcoat flowcoaters at its Plow and Planter works in Moline, Illinois, subject to the following conditions:

1. This variance shall expire on August 19, 1990;
2. Painting operations in Department No. 05 shall be discontinued;
3. Painting operations in Department No. 07, 40, 44, and 75 shall be discontinued by December 31, 1987;
4. Painting operations in Department No. 88 shall comply with 35 Ill. Adm. Code Section 215.204(k) by December 31, 1987;
5. Painting operations in Department No. 62 shall comply with the following limitations by December 31, 1987:
  - a. Black topcoater flowcoater shall comply with Section 215.204(k);
  - b. Black dip tank shall comply with Section 215.204(k);
  - c. Green prime flowcoater shall not emit more than 5.8 lb VOM/gal of coating (annual average basis), less water, delivered to the coating applicator;
  - d. Green topcoat flowcoater shall not emit more than 5.9 lb/ VOM/gal of coating (annual average basis), less water, delivered to the coating applicator;
  - e. Yellow topcoat flowcoater shall not emit more than 5.1 lb VOM/gal of coating (annual average basis), less water, delivered to the coating applicator;
6. Petitioner shall submit reports to the Agency, Division of Air Pollution Control, 5415 North University, Peoria, Illinois, every three months reporting paint (including VOM content) and solvent usage during the previous three months;
7. Petitioner shall begin the compliance project schedule contained in the amended petition in this matter dated October 31, 1986 and attached to this Order no later than two years from the date of this variance order and shall be in compliance by August 19, 1990; and

- 8. Within forty-five (45) days after the date of variance order, Petitioner shall execute a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions. Such certification shall be sent to the Agency's attorney of record. This forty-five (45) day period shall be held in abeyance for any period during which this matter is appealed. The form of the certification shall be substantially as follows:

CERTIFICATION

I, (We) \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the Order of the Illinois Pollution Control Board in PCB 86-162, dated February 19, 1987.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
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 19<sup>th</sup> day of February, 1987, by a vote of 6-0.

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