

ILLINOIS POLLUTION CONTROL BOARD  
September 28, 1989

CONTAINER CORPORATION OF )  
AMERICA, )  
 )  
Petitioner, )  
 )  
v. ) PCB 87-183  
 ) (Variance)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board upon an August 31, 1989 motion to reconsider filed by the petitioner, Container Corporation of America ("CCA"). CCA requested variance from the Board's regulations governing emissions from flexographic and rotogravure printing operations under 35 Ill. Adm. Code 215.401-215.407 and 215.245 until December 31, 1990. The Illinois Environmental Protection Agency ("Agency") filed a response to CCA's motion to reconsider on September 15, 1989.

CCA requests that the Board reconsider its July 27, 1989 decision to deny CCA's variance petition and that the Board grant CCA a variance until December 31, 1990. In the alternative, CCA requests that the Board give CCA one year from the date of this Order to come into compliance.

CCA has presented to the Board new information in its motion for reconsideration. For the purpose of addressing this information, the Board grants CCA's motion for reconsideration.

In CCA's motion for reconsideration, CCA requests that the Board take official notice of the United States Environmental Protection Agency's ("USEPA's") emission estimates for the Consolidated Metropolitan Statistical Area ("CMSA") as published in the Federal Register on July 11, 1989.

The Board declines CCA's request to take official notice of USEPA's emission estimates for the CMSA. This information was published in the Federal Register on July 11, 1989. The Board's decision regarding CCA's variance petition was rendered on July 27, 1989. The Board declines to take official notice now of information which was readily available prior to the Board's final decision in this case. This information does not

constitute "newly discovered evidence which by due diligence could not have been discovered in time." (see 35 Ill. Adm. Code 103.301(b)(1)).

Even if the Board were to take official notice of USEPA's emission estimates, that information would not change the Board's decision to deny CCA's variance request. CCA states in its motion for reconsideration that CCA's "emission levels must be put in the context of the total load in the Chicago Metropolitan area." However, CCA fails to cite any authority for this proposition. Indeed, there is no provision in the Environmental Protection Act ("ACT") that requires the Board to determine the environmental impact of a proposed variance solely by comparing the petitioner's emissions with regional emissions. As stated by the Agency in its response to CCA's motion, such a comparison "ignores the effects many such major sources have, when compounded together, on the ozone nonattainment situation in the Chicago Metropolitan Area." (Agency Resp. at 3,4). Such an interpretation could result in greater tolerance for large VOM emissions in ozone nonattainment areas than in ozone attainment areas since the large VOM emissions would be a lesser percentage of the total VOM load for the nonattainment area.

The Board found in its July 27, 1989 Opinion in this case, as in Ekco Glaco, that CCA is a source of hydrocarbon emissions into the air, and as such contributes to the violation of the ambient air standards. (See Ekco Glaco Corp. v. IEPA and IPCB, 134 Ill. Dec. 147, 542 N.E.2d 147, 152 (Ill. App. 1 Dist. 1989)). Any discussion about CCA's VOM emissions as a percentage contributing to the regional total does not change CCA's emission figures themselves, which the Board has already found are not an insignificant environmental impact.

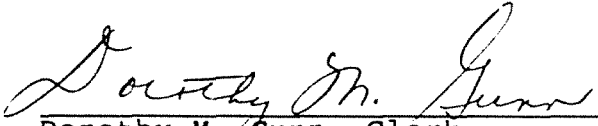
CCA's other arguments regarding hardship and the adequacy of a compliance plan only misconstrue the Board's July 27, 1989 Opinion and thus fail to persuade the Board to reverse its prior holding. The Board also declines to grant CCA a variance for one year to come into compliance, for the same reasons stated in this Order and in the Board's July 27, 1989 Opinion and Order.

The Board hereby declines to reverse its July 27, 1989 Opinion and Order which denied CCA's variance petition.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 1/2 par. 1041, provides for appeal of Final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 28<sup>th</sup> day of September, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board