

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1989

JEFFERSON SMURFIT CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 87-185
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ROY M. HARSCH and DANIEL F. O'CONNELL, OF GARDNER, CARTON &
DOUGLAS, APPEARED ON BEHALF OF PETITIONER; AND

JOSEPH R. PODLEWSKI, OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon a request for
variance filed by Jefferson Smurfit Corporation ("Smurfit"), on
November 30, 1987, as amended on January 20, 1988, as secondly
amended on February 23, 1988 and as thirdly amended on November
18, 1988. In its third amended petition (November 18, 1988),
Smurfit is requesting a 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, 1989.

PROCEDURAL HISTORY

In response to a December 3, 1987 Board Order, Smurfit filed
an amended petition on January 20, 1988. This amended petition
advised the Board that Smurfit had filed a petition for site-
specific relief from Section 215.245 as a primary compliance
method, with installation of control equipment as an alternative
compliance method. However, Smurfit did not address the
challenge to the validity of Section 215.245 raised in its
original petition, which the Board had required Smurfit to brief
in its December 3, 1987 Order. By an Order of January 21, 1988,
the Board noted Smurfit's failure to address the issues raised in
challenging the validity of Section 215.245 and again ordered
Smurfit to brief those issues.

In response to the Board's January 21, 1988 Order, the
Agency filed a prehearing brief on February 19, 1988 and Smurfit
filed its brief on February 23, 1988 with a second amended
variance petition. Smurfit's second amended petition asserted
that the Board's Subpart P rules were invalid because they were
not properly adopted. (2d Amended Pet. at 1).

On June 16, 1988, the Board issued an Interim Order in regard to the issues discussed in Smurfit's prehearing brief. In that Order the Board found that challenges to the validity of the regulations as applied are limited "within the variance proceeding to matters concerning uncertainty of meaning of the regulations." (Jefferson Smurfit Corporation v. IEPA, PCB 87-185, June 16, 1988 at 3). The Board also found that "such burden of proof as may exist in the instant matter resides with Petitioner." (Id.). Finally, the Board found that the standard of review for this proceeding was arbitrary or unreasonable hardship as specifically provided for in the Environmental Protection Act ("Act") and not technical feasibility or economic reasonableness as maintained by Smurfit. The Board then directed the Hearing Officer to proceed to hearing.

In response to Smurfit's third amended petition, the Agency filed its recommendation to grant the variance with conditions on December 14, 1988 and Smurfit filed a response to the Agency's recommendation on December 19, 1988. Hearings on this matter were held on January 24, 1989 and March 27, 1989; no members of the public attended either hearing.

BACKGROUND

Smurfit's Bedford Park plant manufactures folding cartons at 6550 South LaVergne Avenue in Chicago. Plant operations include printing by using a rotogravure press, which is the subject of this variance proceeding. Fumes and hot air are collected in the hooding at each printing station and vented through three roof stacks. Presently, there are no control devices on the rotogravure press. (3rd Amended Pet. at 2,3).

According to the Agency, actual annual volatile organic material ("VOM") emissions from Smurfit's rotogravure press were as follows: 1984 - 260 tons per year ("TPY"), 1985 - 250 TPY and 1986 - 297 TPY. The Agency could not provide 1987 or 1988 VOM emission figures but Smurfit has estimated its 1987 annual VOM emission rate to be in the vicinity of 300 tons. (Agency Rec. at 6).

Since Smurfit emits less than 1,000 tons of VOM yearly, it was exempt from the Board's emission limitations for rotogravure printing operations until November 9, 1987. (35 Ill. Adm. Code 215.401,402). When the Board amended its regulations governing VOM emissions from rotogravure and flexographic printing operations, the amount of VOM emissions triggering the exemption from the requirements of Section 215.401 for sources in ozone non-attainment areas decreased from 1,000 TPY to 100 TPY. (In re: Proposed Amendments to 35 Ill. Adm. Code 215: Flexographic and Rotogravure Printing, R85-21, Docket B; 35 Ill. Adm. Code 215.245). Affected facilities were required to be in compliance by December 31, 1987. Since Smurfit filed its original variance petition within twenty days of the effective date of Section 215.245, the effect of that rule as it applies to Smurfit is

stayed pending the disposition of this variance proceeding. (Ill. Rev. Stat. ch. 111-1/2, par. 1038(b)(1987); 35 Ill. Adm. Code 104.102).

COMPLIANCE PLAN

In its third amended petition, Smurfit states that it will bring its plant into compliance by December 31, 1989, by installing and operating an incinerator system. Smurfit anticipates an installation cost of \$425,000, plus an annual operating cost of \$35,000. (R. at 15, March 27, 1989).

As alternative methods of compliance, Smurfit considered the utilization of a solvent recovery system or the conversion of its operations to a water-based ink. (3rd Amended Pet. at 7). Smurfit determined that use of a solvent recovery system was not feasible at its plant as it has a relatively small press that uses a variety of solvents. Smurfit contends that the most common solvent recovery system, a carbon absorption system, works best in a large plant utilizing a single non-water soluble solvent in its ink. (3rd Amended Pet. at 7). Similarly, Smurfit rejected the possibility of converting to water-based inks, alleging that it was neither technically feasible nor economically reasonable to so convert.

HARDSHIP AND ENVIRONMENTAL IMPACT

Smurfit's Bedford Park plant is located in Cook County, a non-attainment area for ozone. The two ozone monitors located closest to Smurfit's Bedford Park facility are in Cicero (1850 S. 51st St.) and Lemont (729 Houston). According to the Agency, neither monitor reported a violation of the ozone ambient air quality standard ("AAQS") in 1986. At least one violation of the ozone AAQS was reported at each monitor in 1987 and two violations were reported at the Cicero monitor in 1988. (Agency Rec. at 12). The Agency also states that "[a]s a major hydrocarbon source in an ozone non-attainment area, [Smurfit] contributes, to an unquantified degree, to the 'frequent, pervasive and substantial' violations of the ozone AAQS in northern Illinois." (Id.).

The Board notes that although both Smurfit's third amended petition and the Agency's recommendation state that Smurfit will come into compliance by installing a catalytic incinerator, the term "catalytic" was deleted by Smurfit at the March 27, 1989 hearing. Since the Agency did not object to this change at the hearing or subsequently, the Board assumes that the efficiency rate of these incinerators is essentially the same.

The Agency states in its recommendation that it "agrees with Smurfit that compliance with the VOM emission limitations of Section 215.401 will create an unreasonable hardship." (Agency Rec. at 15). According to the Agency, immediate compliance would require Smurfit to either reduce operations so that emissions do

not exceed 100 tons annually or shut down its printing operations. The Agency points out that since "more than 75% of all products manufactured at Smurfit are printed using the rotogravure press, a shutdown of that press would very likely result in a shutdown of the entire plant." (Id.). Similarly, the Agency points out that decreasing production enough to reduce VOM emissions to 100 TPY or less would also have an adverse impact upon plant operations, possibly requiring Smurfit to shut down. The Agency states in its recommendation that the requested variance should be granted "because an unreasonable hardship will exist in the absence of a variance and Smurfit is committed to a definite program designed to achieve compliance by a date certain." (Agency Rec. at 18).

CONCLUSION

Although the Agency's recommendation indicates that there is some environmental impact, that impact is not resolved by the Agency except to the extent that Smurfit does have a definite compliance plan to be achieved relatively soon, by December 31, 1989. The Board notes with special concern Smurfit's contribution to the ozone violations. However, based on the record before it, the Board finds that Smurfit has presented adequate proof that immediate compliance with Sections 215.401-407 and Section 215.245 would impose an arbitrary or unreasonable hardship upon Smurfit. The Board will grant the requested relief, subject to conditions.

The Board notes the Agency's concern in its recommendation that Smurfit's ambitious schedule leaves little room for delay or error. Several deadlines, in addition to those conditions recommended by the Agency, have been included in the Order following this Opinion to ensure Smurfit's adherence to its timetable. In addition, Smurfit's stay from the Board's regulations in Section 215.245 ends upon granting this variance; in case of delay, Smurfit is forewarned to timely file a petition for variance, allowing 120 days for a decision by the Board.

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

ORDER

1. Jefferson Smurfit Corporation ("Smurfit") is hereby granted variance from 35 Ill. Adm. Code 215, Subpart P (35 Ill. Adm. Code 215.401-215.407) and 35 Ill. Adm. Code 215.245 for its Bedford Park facility, subject to the following conditions:
 - A. This variance terminates on December 31, 1989 or when compliance with 35 Ill. Adm. Code 215.401-215.407 and 215.245 is achieved, whichever occurs first.
 - B. Installation of the new incinerator shall begin no later than September 15, 1989.

- C. Installation of the new incinerator shall be completed no later than December 15, 1989.
- D. The new incinerator shall be operable and Smurfit shall be in compliance with 35 Ill. Adm. Code 215, Subpart P (35 Ill. Adm. Code 215.401-407) and 35 Ill. Adm. Code 215.245 no later than December 31, 1989.
- E. Smurfit shall give thirty (30) days notice prior to the expected date of any stack test to the Agency's regional office and Emission Source Specialist at the Agency's Maywood address provided above. The Agency's Emission Source Specialist shall be further notified within a minimum of five (5) working days of the exact date, time, and place of these tests, to enable Agency to witness these tests.
- F. During the term of this variance, Smurfit shall submit quarterly written reports to the Agency detailing all progress made in achieving compliance with 35 Ill. Adm. Code 215, Subpart P at its plant located at 6550 South Lavergne Avenue, Chicago, Illinois. The first quarterly report will be due thirty (30) days from the date of this Order. These quarterly reports shall include monthly VOM emission data from the press department. The first quarterly report shall also include copies of material data sheets showing the composition (in terms of percentage of solid solvent and water) of all inks and coatings used during the rotogravure printing processes. All of the above information shall be submitted to the Agency at the following addresses:

Manager, Permit Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
1340 N. Ninth Street
Springfield, Illinois 62702

Manager, Field Operations Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
1701 S. First Avenue
Suite 600
Maywood, Illinois 60153

- 2. Within forty-five (45) days after the date of this Order, Smurfit shall execute and send to:

Mr. Joseph R. Podlewski, Jr.
Enforcement Attorney
Illinois Environmental Protection Agency
1701 S. First Avenue
Suite 600
Maywood, Illinois 60153

A certification of its 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. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of the certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board, in PCB 87-185 dated June 22, 1989, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

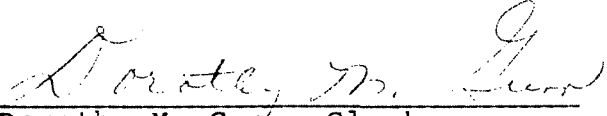
Title

Date

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 Opinion and Order was adopted on the 32nd day of June, 1989, by a vote of 7-0.


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