

ILLINOIS POLLUTION CONTROL BOARD
February 23, 1989

DMI, INC.,)
)
 Petitioner,)
)
 v.) PCB 88-132
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. ROBERT MCCLURE, OF DMI, INC., APPEARED ON BEHALF OF THE PETITIONER;

MS. LISA MORENO, OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a request for variance initially filed on August 22, 1988 and amended November 1, 1988 by DMI, Inc. ("DMI"). DMI requests variance from 35 Ill. Adm. Code 215.204(j) and 215.211 until July 1, 1989 to allow time to achieve compliance with the substantive requirements of the Board's regulations governing volatile organic material ("VOM") emissions from miscellaneous metal parts coating processes.*

On December 6, 1988, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that the variance be granted. A hearing was held on January 4, 1989; no members of the public attended.

Based on the record before it, the Board finds that DMI would incur an arbitrary or unreasonable hardship if the requested relief were to be denied. Accordingly, the variance will be granted, subject to conditions.

* Although DMI's petition requested variance from Section 215.202, the Agency correctly states that DMI actually needs variance relief from Sections 215.204 and 215.211.

BACKGROUND

DMI manufacturers farm machinery and dump truck bodies in Woodford County. It is employee-owned and employs approximately 260 people. (P. at 1).

The paint process at DMI is conducted in two paint areas. One paint room utilizes a spray system with medium solid paints in the coating of dump trucks and grain wagons. This room is currently in compliance with the Board's regulations (35 Ill. Adm. Code 215.204(k)) and does not require a variance. (P. at 5, Agency Rec. at 2).

The second paint area, the "paint deck", is the subject of DMI's variance petition. The paint deck area consists of primer and finish coat dip tanks and two spray booths on a deck. The parts to be painted travel by a conveyor through the primer dip tank and then through a 140^oF heating oven. (P. at 2). The parts continue on the conveyor through a paint booth where some are sprayed by electrostatic paint guns for the top coat. These operations in the paint deck area have resulted in VOM emissions of 5.8 lb/gal from the prime coat and 4.7 lb/gal from the top coat according to the second quarter of 1988 emissions report. (P. at 6).

PAST EFFORTS

According to DMI's petition for variance, it has attempted to come into compliance since December, 1984. (P. at 7). DMI investigated and rejected several alternative methods for coming into compliance including the use of urethanes, flow coating (with water borne paints) and powder coatings. DMI tested a water-borne primer coating extensively but was unable to utilize this method when the paint company refused to guarantee the paint in the tank on May 6, 1987. Thus, DMI chose the one-coat bake system as the best paint system to bring it into compliance. (P. at 7,8).

COMPLIANCE PLAN

DMI states in its petition for variance that it intends to use a one-coat system with a baked enamel finish to achieve compliance with Section 215.204. As such, DMI proposes to discontinue use of the primer tank, install a baking oven and change the black dip tank to water-borne baked paint. (P. at 6).

In DMI's original petition it requested a variance from January 1, 1988 until January 1, 1989. DMI's amended petition requests extension of the variance until July 1, 1989. (Amended P. at 1). DMI alleged that trouble obtaining the necessary permits halted installation of the oven, necessitating DMI's request for an extension. (R. at 8).

Although the Agency's recommendation did not include a requirement and schedule for written reports by DMI, such a requirement for written reports has been included in the Board's Order following this Opinion. The dates of March 30th and June 30th were chosen as the half-way and end points of the variance, for which DMI must submit written reports to the Agency.

DMI's amended petition provides greater detail regarding the compliance schedule. Some of this schedule has already been completed - the construction and operating permits have been issued. At the January 4, 1989 hearing, DMI stated that the baking oven was 90% complete and was expected to be running and ready for testing by January 9, 1989. DMI asserted in its amended petition that it will be in compliance 120 days after the permits are filed. (Amended P. at 1). DMI further stated at the January 4th hearing that it expects to be in compliance at the end of its 30 day test run period. (R. at 6). In any event, DMI agrees to be in compliance by July 1, 1989 and the Agency agrees with the reasonableness of this timeframe. (Amended P. at 1; R. at 13). The Board notes that DMI could already be in compliance by the date of this Order and that some requirements of this Order may have already been fulfilled.

There has been some discussion as to which regulation applies to DMI's coating operations. According to the Agency, before DMI's installation of the baking oven, it was subject to 35 Ill. Adm. Code 215.204(k)(2) because its parts coating process was an extreme performance top coat which was air dried, allowing emissions of 4.3 lb/gal. Since DMI has chosen to install a baking oven which operates at temperatures above 194^oF as part of its compliance plan, DMI will be subject to more stringent regulations under Section 215.204(j) as the coating is no longer air dried. (R. at 11). DMI believes that its compliance program will meet the more stringent standard under 215.204(j) of 3.5 lb/gal. (R. at 11-13). The Board agrees with the Agency that DMI's compliance program is adequate to comply with the Board regulations.

DMI wants the variance to be retroactive to January 1, 1988. The Board notes that DMI has been aware of the need to comply for many years and as of May, 1987 knew that its plan to use different paint was not going to be implemented. No reason is given for waiting until August of 1988 to apply for a variance. To grant retroactive relief as requested would encourage other companies to file in an untimely manner. Accordingly, the Board will grant relief beginning December 20, 1988, which is 120 days from the date DMI filed.

HARDSHIP AND ENVIRONMENTAL IMPACT

The Agency agrees with DMI that denial of this variance would be an arbitrary or unreasonable hardship. (Amended Rec. at

6). The Agency believes that DMI has made a good faith effort to come into compliance. The Agency agrees that it would not have been financially prudent to move forward with the compliant coatings after the manufacturer withdrew its guarantee in May, 1987 and notes that DMI's financial situation is not very strong. (Amended Rec. at 6).

The Agency believes that the variance sought by DMI will not have any adverse environmental impact. DMI asserts that its VOM emissions for the first half of 1988 were 42,500 pounds. (P. at 7). Although the Agency, at the hearing, stated that it was uncertain about some of the data used to arrive at that figure for total annual VOM emissions, there is no dispute that DMI is a relatively small source. Using DMI's emissions figure of 42,500 lbs, the Board estimates total annual VOM emissions to be 42.5 tons/yr. Thus, there is no dispute that DMI emits more than 25 tons of VOM per year, and could not be exempted from compliance under Section 215.206(a)(1). It is important to note that under the Board's regulations for coating operations, VOM emissions limitation are rate-based (i.e., lb/gal).

DMI is located in rural Woodford County, an attainment area for ozone. According to the Agency, ozone ambient air quality standards that have been recorded at the closest monitor in Peoria have not been exceeded for the past several years. (Amended Rec. at 5).

CONCLUSION

In view of the hardship here demonstrated, as well as the projected environmental effects during the term of this proposed variance, the Board finds that adequate proof has been presented that immediate compliance with 35 Ill. Adm. Code 215.204(j) and 215.211 would impose an arbitrary or unreasonable hardship upon DMI. Accordingly, the variance will be granted with the conditions outlined in the Order below.

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

ORDER

1. Petitioner, DMI, Inc., is hereby granted variance from 35 Ill. Adm. Code 215.204(j) and 215.211 for its facility located on Route 150 in Woodford County, Illinois, subject to the following conditions:
 - A) This variance begins on December 20, 1988 and expires on July 1, 1989 or when compliance with 35 Ill. Adm. Code 215.204(j) is achieved, whichever occurs first.

- B) DMI's present dip tank for primer coating shall be eliminated.
 - C) A conveyor system shall be installed to convey parts to electrostatic spray booths to be painted with low-VOM coatings without a primer.
 - D) The black coating dip tank shall continue to be used, with a water-reducible black enamel coating with a VOM content of 3.39 lb/gal.
 - E) All coated parts shall be conveyed through a gas-fired bake oven and cooling tunnel. Installation of the gas-fired bake oven shall be completed 30 days after the construction permit is received.
 - F) During the term of this variance, DMI shall submit two written reports to the Agency detailing all progress made in achieving compliance with 35 Ill. Adm. Code 215.204(j) and 215.211. The first report shall be due March 30, 1989. The second report shall be due June 30, 1989 or when compliance with 35 Ill. Adm. Code 215.204(j) is achieved, whichever occurs earlier. These reports shall be sent to:

Control Programs Coordinator
Division of Air Pollution Control
Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706
 - G) DMI shall abide by all conditions of its joint construction and operating permit issued on December 28, 1988.
- 2) Within 45 days of the date of this Order, Petitioner shall execute and forward to Lisa Moreno, Enforcement Attorney, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being 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 said Certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board, in PCB 88-132, dated February 23, 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.

J. D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23rd day of February, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board