

ILLINOIS POLLUTION CONTROL BOARD
July 27, 1989

LCN CLOSERS, INC.,)
)
) Petitioner,)
)
) v.) PCB 89-27
)
) ILLINOIS ENVIRONMENTAL)
) PROTECTION AGENCY,)
)
) Respondent.)

STEPHEN H. GUNNING, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF PETITIONER; AND

LISA MORENO, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon a petition for variance filed February 8, 1989 by petitioner, LCN Closers, Inc. ("LCN"). LCN seeks a variance from the requirements of regulations 215.183 governing emissions from open top vapor degreasers (35 Ill. Adm. Code 215.183) through July 15, 1989 and from the coating emission limitations of regulation 215.204(j)(2) through December 1, 1990. A hearing was held on June 2, 1989. One member of the public attended. On May 12, 1989, the Illinois Environmental Protection Agency ("Agency") filed its recommendation asserting that LCN's request for variance from regulation 215.183 be denied, but recommending that variance be granted from 215.204(j)(2) subject to certain conditions.

Background

LCN owns and operates a manufacturing plant which produces hydraulic door closers, including the component metal parts of the finished product. (Pet. at 2.) The facility is located in Princeton, Bureau County, Illinois, a city of approximately 7,500 persons. (Pet. at 2.) LCN employs 300 people and has a 21 percent share of the national market for its product. (Pet. at 2.)

Before assembly and painting, a variety of metal component parts are cleaned of dirt, metal chips and cutting oils in an open top solvent degreasing machine. The present degreasing machine was installed in 1979, replacing identical equipment which had been installed in 1968. (Pet. at 3; Tr. at 7.) The degreaser uses trichlorethylene, which is heated to 189°F, to

clean the metal component parts. (Pet. at 3.) The parts are placed in a basket, lowered into the degreaser and rotated for 30 seconds. (Pet. at 3.) The basket is lifted out of the solvent and the parts are allowed to drain. (Pet. at 3.) The degreaser remains uncovered during an entire eight-hour work shift. (Pet. at 3.)

Volatile organic material ("VOM") is emitted during the cleaning process. Based upon the amount of solvent recycled each year compared to the amount of solvent purchased, LCN asserts that VOM emissions from the degreaser were 31,500 lbs. in 1986 and 16,440 lbs. in 1987. (Pet. at 5.) The use of the degreaser is governed by 35 Ill. Adm. Code 215.183 which specifies both operating and equipment requirements. Compliance with this regulation was required by July 1, 1980. (35 Ill. Adm. Code 215, Appendix C, Rule 205(j).) LCN acknowledges that its degreaser is not in compliance with this regulation. (Pet. at 3; Tr. at 11.)

As part of its manufacturing process, LCN applies coatings to the door closers using a Ransberg No. 2 electrostatic application process. (Pet. at 7.) After the coating is applied, the parts pass through a hot air dryer at 154°F. (Pet. at 8.) The parts are then air dried as they move through the plant on 1,900 feet of overhead track. (Pet. at 8.)

The VOM emissions from LCN's coating process are regulated by 35 Ill. Adm. Code 215.204(j)(2) which establishes a limit of 3.5 pounds VOM per gallon of coating for air-dried coatings of miscellaneous metal parts. LCN has calculated its actual emissions for 1987 as 89.06 tons per year and its allowable emissions as 48.35 tons per year. (Pet. Ex. E.) Compliance with the limitations of Section 215.204(j)(2) was required by December 31, 1987. (35 Ill. Adm. Code 215.211(b).)

Hardship and Environmental Impact

LCN asserts that immediate compliance with the regulation governing operation of the open top vapor degreaser would impose an arbitrary or unreasonable hardship because LCN cannot properly clean the component parts of the door closers without use of the degreaser. (Pet. at 7.) LCN states that if it cannot properly clean the component parts, it would be without a marketable product and would be out of business. (Pet. at 7.)

The Agency opines that any hardship incurred by LCN is self-imposed. (Agency Rec. at 6.) The Agency notes that, in installing the present degreaser in 1979, LCN replaced identical equipment which had been installed ten years earlier. (Agency Rec. at 6.) The record indicates that LCN became aware in 1984 that the degreaser was not in compliance. (Tr. at 7, 10-12; Pet. Ex. 2.) Yet, the Agency did not receive LCN's application for a

permit until 1988. (Agency Rec. at 7.) The Agency believes that it would be inappropriate to grant a variance where the degreaser has been out of compliance for eight years. (Agency Rec. at 7.)

The burden of proving arbitrary or unreasonable hardship is on the party seeking the variance. (Ill.Rev.Stat. 1987, ch. 111 1/2, par. 1037; United Ventures v. Pollution Control Board, 476 N.E.2d 1368 (2d Dist. 1985).) The petitioner must establish that the hardship resulting from a denial of the variance would outweigh the injury to the public from a grant of the variance. (Id.) LCN's petition does not adequately address these concerns. LCN's allegation of hardship is conclusory. While LCN states that it became aware of compliance problems with the degreaser in 1984 (Tr. 7, 10-13; Pet. Ex. 2), and attempted to reduce VOM emissions by covering the degreaser when not in use and by using it less (Tr. 12-13), LCN does not adequately demonstrate that it investigated alternative methods of coming into compliance. Unlike its assertion of hardship regarding its coating process, LCN does not set forth any evidence that costs of alternative cleaning methods are prohibitive. We conclude that LCN has failed to meet its burden of proving that immediate compliance with regulation 215.183 would impose an arbitrary or unreasonable hardship. Therefore, the Board need not address the Agency's assertion that the hardship is self-imposed.

LCN also asserts that immediate compliance with 35 Ill. Adm. Code 215.204(j)(2) would impose an arbitrary or unreasonable hardship. (Pet. at 9-10.) In support of this assertion, LCN states that, in addition to producing door closers that function properly, it is important to produce a durable coating for the closers that meets customer demands regarding finished quality and color. (Pet. at 9-10.) The manager of manufacturing at LCN testified that architectural standards require that the coating have a certain metallic appearance that will match storefronts. (Tr. at 43.) To require an immediate abandonment of the current coating process would require substantial modification of LCN's design and production processes with attendant capital costs and, in all likelihood, result in a product unacceptable to LCN's customers. (Pet. at 10.)

LCN has considered alternative coating methods. Powder paint was rejected by LCN because the extreme heat associated with this method is not suitable for the parts LCN assembles with linkages, O-ring seals and hydraulic fluid. (Pet. at 10.) A dipping method was rejected because the heavy application of coatings resulting from this process would impair the mechanical functioning of the equipment. (Pet. at 10.)

Recognizing the need to comply with the Board's regulations, LCN has in the past investigated two other alternative coating methods. These methods are the use of an alternate non-volatile coating which meets customer specifications or, alternatively,

installation of an incinerator to destroy the VOM's released by the coating process. (Pet. at 11; Pet. Ex. 4.) LCN had a stack test performed on its plant at a cost of approximately \$7,500. (Pet. at 11.) This study concluded that installation of a new incinerator would be 95 percent efficient in destroying VOM emissions. (Pet. at 11.) The estimated cost of such equipment is \$1 million. (Pet. at 11.)

LCN has also consulted with representatives of several paint companies regarding whether these suppliers could create a non-volatile coating that would meet LCN's specifications. (Pet. at 12.) While these efforts have not been completely successful, LCN has seen some improvement in the materials produced and has been informed that an acceptable non-volatile coating will be available in the near future. (Pet. at 12.)

The Agency agrees that immediate compliance with the coating emission standard imposes an arbitrary or unreasonable hardship upon LCN. (Agency Rec. at 8.) The parties also agree that, while VOM emissions contribute to the formation of ozone, the variance sought by LCN from the coating emission standard (35 Ill. Adm. Code 215.204(j)(2)) will not result in an adverse environmental impact. The Agency notes that in 1988 ozone monitoring stations located near LCN's facility have not registered a violation of the air quality standards. (Agency Rec. at 5.)

Given the technical problems and financial costs associated with changing from the current electrostatic coating method to a different coating method, the costs of installing an incinerator and LCN's commitment to conclude its search for a non-volatile coating acceptable to its customers, the Board concludes that LCN has established that immediate compliance with regulation 215.204(j)(2) would impose an arbitrary or unreasonable hardship upon LCN.

LCN requests that its variance from the coating emission limitations extend through December 1, 1990 but it does not suggest when the variance should begin. (Pet. at 6). Similarly, the Agency does not recommend a starting date for the proposed variance. LCN installed the present coating process in the summer of 1985. (Pet. at 8). Compliance with section 215.204(j)(2) was required by December 31, 1987. (See, 35 Ill. Adm. Code 215.211(b)). Although the record does not state the exact date LCN applied for an operating permit, the Agency notes that LCN's application for a permit for its coating process was denied on February 7, 1988. (Agency Rec. at 4). There must be exceptional circumstances supporting the grant of a retractive variance. (Classic Finishing Co., Inc. v. IEPA, PCB 84-174 (June 20, 1986).) LCN does not argue that it should be granted a retroactive variance nor does the record reveal any special circumstances indicating that such a grant would be proper.

Compliance Plan

LCN proposes to come into compliance with 35 Ill. Adm Code 215.183 by purchasing new cleaning equipment which is being made to LCN's specification at the cost of approximately \$278,000. (Pet. at 6; Pet. Ex. B.) LCN states that this new equipment will meet applicable design standards, including having a cover over the cleaning area when the degreaser is in operation and a drying function that will reduce VOM emissions. (Pet. at 6.) LCN believes that this equipment will be installed as of July 15, 1989. (Pet. at 6.)

LCN proposes to come into compliance with 35 Ill. Adm. Code 215.204(j)(2) through the use of non-volatile coatings. (Pet. at 13.) LCN expects these newly formulated coatings to be available by December 1, 1989. (Pet. at 6.) Alternatively, if LCN cannot procure an acceptable alternate coating by December 1, 1989, it commits itself to purchasing an incinerator which will be operational no later than December 1, 1990. (Pet. at 6.) In the interim, LCN will replace its existing cover dip with a waterborne product resulting in a decrease of VOM emissions. (Pet. at 6.)

Consistency with Federal Law

LCN states that its proposed variance from 35 Ill. Adm. Code 215.183 is consistent with the requirements of the Clean Air Act. (42 USC 7401 et seq.) While LCN asserts that the proposed variance would be approved by the United States Environmental Protection Agency ("USEPA") as part of the State Implementation Plan ("SIP") for ozone, the Agency asserts that the USEPA would not approve such a SIP revision because LCN's degreaser has been out of compliance for eight years. (Agency Rec. at 6.)

The parties agree that the proposed variance from the requirements of 35 Ill. Adm. Code 215.204(j)(2) is consistent with the Clean Air Act.

Conclusion

In view of the hardship demonstrated and the minimal projected environmental effects expected 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)(2) would impose an arbitrary or unreasonable hardship upon LCN. Accordingly, the variance will be granted subject to the conditions outlined in the Order below. Because of LCN's failure to establish that immediate compliance with 35 Ill. adm.

Code 215.183 would impose an arbitrary and unreasonable hardship, the proposed variance from this regulation is denied.

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

ORDER

LCN Closers, Inc. is hereby granted a variance from 35 Ill. Adm. Code 215.204(j)(2) for its facility in Princeton, Illinois, subject to the following conditions:

1. This variance begins July 27, 1989 and ends December 1, 1990;

2. LCN shall submit to the Agency reports on a quarterly basis detailing the progress achieved in finding low-VOM coatings to the following address:

Illinois Environmental Protection Agency
Division of Air Pollution Control.
1340 North 9th Street
Springfield, IL 62706

3. In the event that LCN does not find acceptable low-VOM coatings by December 1, 1989, it shall install an incinerator to be operational by December 1, 1990, according to the following schedule:

a. December 1, 1989; Order equipment and apply to the Agency for a construction permit;

b. December 1, 1989 - August 1, 1990: Install new gas line and electrical wiring at the plant and obtain a new transformer necessary to the operation of equipment;

c. August 1, 1990: Delivery of equipment;

d. August 1, 1990 - November 1, 1990: Install incinerator and appurtenant duct work and electrical control equipment;

e. November 1, 1990 - December 1, 1990: Test and calibrate equipment; and

f. December 1990: Apply for operating permit;

4. LCN shall submit to the Agency at the above-stated address quarterly reports detailing its progress in installing the incinerator;

5. Within 45 days after the date of this Opinion and Order,

LCN shall execute and send to:

Illinois Environmental Protection Agency
Attention: Thomas Davis
Enforcement Programs
2200 Churchill Road
Springfield, IL 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if LCN fails to execute and forward the certificate within the 45-day period. The 45-day period shall be in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We) _____, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 89-27, dated July 27, 1989, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, 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 27~~th~~ day of July, 1989, by a vote of 6-0.

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