

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

LUSTOUR PACKAGING CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 87-93
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. THOMAS D. SCHWARTZ, FEIRICH SHOEN MAGER & GREEN, APPEARED ON BEHALF OF PETITIONER,

MR. CHARLES M. HAYDUK APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a request for variance filed by Lustour Packaging Corporation ("Lustour"). Lustour requests variance from 35 Ill. Adm. Code 215.405, which requires that sources of volatile organic material ("VOM") emissions located in attainment counties comply with rules regarding Flexographic and Rotogravure Printing by December 31, 1987. The requested period of variance is until December 31, 1988.

Based on the record before it, the Board finds that Lustour would incur an arbitrary or unreasonable hardship, not justified by the environmental impact, if the requested relief were to be denied. Accordingly, the variance will be granted, subject to conditions.

PROCEDURAL HISTORY

Lustour filed its original Petition for Variance on July 13, 1987. Pursuant to a Board Order for more information dated July 15, 1987 and a Board Order dated September 4, 1987 granting additional time to file, Lustour filed an Amended Petition for Variance on September 28, 1987.

On December 1, 1987, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that the requested relief be denied. Lustour and the Agency thereafter entered negotiations to resolve differences (R. at 5). At hearing, held December 15, 1987 in Carbondale, Lustour and the Agency announced that they had reached agreement on a mutually acceptable modified variance request, thus framing the matter as it currently stands

before the Board. Additionally, on February 3, 1988 the Agency filed an Amended Recommendation in which it recommends grant of the requested variance subject to conditions, and on February 16, 1988 Lustour filed a Response to Amended Recommendation in which it notes that it has no objection to the conditions recommended by the Agency.

BACKGROUND

Lustour is a producer of rotogravure and flexographic printed and laminated packaging and label materials which have primary use in the food processing industry. Lustour's headquarters and single manufacturing site is located in Murphysboro, Jackson County. Lustour has 231 employees and is the largest manufacturing company located in Murphysboro.

Lustour discharges VOM to the atmosphere as a consequence of its manufacturing operations. The emissions are derived from solvents contained in raw materials plus solvents added as a part of the manufacturing process. Total VOM emissions for the years 1984 through 1986 were 1539, 1396, and 1457 tons, respectively.

35 Ill. Adm. Code 215.405 specifies in pertinent part that flexographic and rotogravure printing facilities located in attainment counties, of which Jackson County is one, be in compliance with the VOM limitations of 35 Ill. Adm. Code Subpart P by December 31, 1987. Exception is provided pursuant to 35 Ill. Adm. Code 215.402 for facilities whose aggregate uncontrolled emissions are limited by operating permit to 1000 tons per year. Lustour is not now in compliance with Subpart P and currently fails to qualify for the exception of 215.402. Lustour accordingly requests variance from 215.405, during the pendency of which it proposes to undertake steps necessary to qualify for the 215.402 exception.

COMPLIANCE PLAN

Lustour proposes during the period of the variance to replace some of its currently-used, VOM-based raw materials with water-based materials, and thereby reduce its annual VOM emissions to a number less than 1000 tons per year. If Lustour can achieve this reduction, the Agency could grant an operating permit for the year 1989 which limits Lustour's aggregate emissions to 1000 tons per year, thus enabling Lustour to qualify for the exception specified in 215.402. The end result would be that, upon issuance of the 1989 permit, Lustour would no longer be subject to the Subpart P limitations. Nevertheless, in qualifying for and in maintaining the exception, Lustour would achieve a significant reduction in VOM emissions, a circumstance which is in accord with the spirit of Subpart P.

Lustour's February 16, 1988 filing contains an appended schedule of compliance by which Lustour purports to be able to achieve its VOM reduction goal.

HARDSHIP AND ENVIRONMENTAL IMPACT

Absent grant of variance, the Agency can not issue 1988 operating permits to Lustour. Absent operating permits, Lustour could not legally conduct its current operations, leaving Lustour open to an enforcement action and possible loss of revenues and jobs for its workforce. On this basis there would be unquestionable hardship associated with denial of the requested variance.

However, the Board can not but observe that the compliance deadline of December 31, 1987, specified in 215.405, was enacted effective January 21, 1983. Thus, Lustour was on notice for almost five years that it would be required to achieve compliance by the December 31, 1987 deadline. That Lustour now faces loss of its operating permits for having failed to timely comply therefore implies a self-imposed hardship. In its defense, Lustour points out that it has recently faced severe financial difficulties.

Contrasting with the hardship is the issue of environmental impact. The materials emitted from Lustour's operations do have a slight solvent odor, although no odor complaints have been recorded. Additionally, Jackson County and all of the adjacent counties have been designated as areas for which ambient air quality standards for VOM have been attained. Granting of the requested variance therefore should not greatly impact the air quality of Jackson County, nor of surrounding regions. Lastly, Lustour's compliance program, if successful, will significantly reduce the amount of VOM emitted by this facility.

SUMMARY

The Board notes that the environmental impact is relatively small and the time over which Lustour would be out of compliance, by the terms of the variance, would be relatively short. On this basis the Board must conclude that the hardship associated with denial of variance, although arguably self-imposed, would nevertheless be arbitrary or unreasonable. For these reasons the Board will grant the requested variance, subject to conditions intended to insure that Lustour expeditiously comes into compliance.

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

ORDER

Petitioner, Lustour Packaging Corporation, is hereby granted variance from 35 Ill. Adm. Code 215.405 subject to the following conditions:

- 1) Variance expires on December 31, 1988.
- 2) During the calendar year 1988 Petitioner's aggregate uncontrolled emissions of volatile organic materials shall not exceed 1200 tons.
- 3) Petitioner shall submit to the Agency a schedule of compliance using water-based inks, lacquers, and adhesives sufficient to reduce emissions of volatile organic materials to a level equal to or less than 1000 tons per year by December 31, 1988 and sufficient to achieve and maintain an emissions rate of 1000 tons per year for each calendar year thereafter.
- 4) Petitioner shall implement the schedule of compliance of 3).
- 5) Thirty (30) days from the date of this order, and each month thereafter for the term of the variance, Petitioner shall submit a report to the Agency in which Petitioner specifies its current monthly rate of emissions of volatile organic materials and its progress made in achieving compliance. Such report shall be forwarded to:

Mr. John Justice, Regional Manager
Division of Air Pollution Control
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, IL 62959

Within 45 days of the date of this Order, Petitioner shall execute and forward to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276, 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), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 87-98, February 25, 1988.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111¹/₂ 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 25th day of February, 1988, by a vote of 7-0.

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