

ILLINOIS POLLUTION CONTROL BOARD
October 20, 1988

M&D FLEXOGRAPHIC PRINTERS, INC.,)
)
 Petitioner,)
)
 v.) PCB 87-182
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. THOMAS M. GILLER, OF GESSLER, FLYNN, LASWELL, FLEISCHMANN,
HUGHES & SOCOL, LTD., APPEARED ON BEHALF OF PETITIONER;

MR. JOSEPH R. PODLEWSKI, JR., 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 on November 25, 1987 by M&D Flexographic Printers, Inc. ("M&D"). M&D requests variance from 35 Ill. Adm. Code 215.245(a) until June 30, 1989 to allow time to achieve compliance with the substantive requirements of the Board's regulations governing emissions from flexographic printing operations.

35 Ill. Adm. Code 215.245 was recently adopted pursuant to the Board's final order in R85-21, Docket B (In the Matter of: Proposed Amendments to 35 Ill. Adm. Code 215: Flexographic and Rotogravure Printing, October 29, 1987). It provides in pertinent part that flexographic printing operations which are located in non-attainment counties and which have aggregate uncontrolled emissions of volatile organic material ("VOM") greater than 100 tons per year comply with rules regarding Flexographic and Rotogravure Printing, as specified at 35 Ill. Adm. Code 215 Subpart P, by December 31, 1987. Prior to the addition of Section 215.245 M&D was exempt from the requirements of Subpart P. Because M&D filed the instant variance petition within twenty days of the effective date of Section 215.245, application of the rule is stayed as to M&D pending a decision on the variance petition pursuant to Ill. Rev. Stat. ch. 111-1/2 par. 1038(b).

On February 19, 1988 the Illinois Environmental Protection Agency ("Agency") filed a recommendation that the requested relief be granted subject to certain conditions. Hearing was originally noticed for July 7, 1988, and subsequently renoticed and held on August 30, 1988; no members of the public attended.

At hearing the parties stipulated that they agree on all substantive issues in this matter save the termination date of the variance (R. at 53). On September 29, 1988 the Agency filed an Amended Variance Recommendation wherein it revised its recommended termination date to coincide with that requested by M&D. As such, there are currently no outstanding issues of disagreement between the parties.

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

BACKGROUND

M&D operates a specialized job shop, located at 3600 W. 83rd Place in Chicago, which provides custom printing services for the food processing and packaging industries. Printing at M&D is done using three flexographic presses, a six-color Carrero press and two four-color Condes presses. A fourth flexographic press is located at the plant but is presently out of service.

The printing inks used by M&D are solvent-based, and contain compounds classified as volatile organic material ("VOM") under the Board's regulations governing air emissions. The VOM emissions from M&D's operations are currently uncontrolled and vent directly to the atmosphere.

Total VOM emissions for the year 1987 were approximately 140 tons (R. at 19). Half of the total VOM emissions are estimated to be due to operation of the Carrero press (Agency Rec. at par. 11).

COMPLIANCE PLAN

M&D intends to achieve compliance with Section 215, Subpart P, by moving the Carrero press from its Chicago plant and relocating to a new plant which M&D is opening in Kankakee County; Kankakee County is an ozone attainment county. Removal of the press will cause emissions at the Chicago plant to fall below 100 tons per year (R. at 27). At that emissions rate, M&D's Chicago plant will be exempt from the substantive requirements of Section 215, Subpart P.

M&D requests until June 30, 1989 to complete its compliance program based on the time necessary to construct and make the Kankakee facility functional. The Agency agrees with the reasonableness of this timeframe (Agency Amended Rec. at 2).

HARDSHIP AND ENVIRONMENTAL IMPACT

The Agency summarizes the matter of hardship as follows:

The Agency agrees with M&D that immediate compliance with the requirements of Section 215, Subpart P is simply not feasible and creates an unreasonable hardship for M&D. Water-based or high solids inks satisfying customer requirements are simply not available, and M&D cannot realistically install VOM control equipment by December 31, 1987. Indeed, the IEPA has stated as a matter of record in the rule-making proceeding which led to adoption of Section 215.245 that "expeditious installation" of control equipment at affected facilities would take one year from the date that regulation was enacted. The Agency does not expect M&D to be able to do in two months (November and December of 1987) what it reasonably expects will take one year. M&D itself asserts that if add-on controls were to be pursued as a compliance option, control equipment could not be installed and operating for at least nine months (Pet. at 7).

M&D's only existing compliance option in the absence of variance relief is to reduce its VOM emissions to less than 100 tons yearly by curtailing production. This would, in all likelihood, force the layoff of one-third of M&D's employees. It would also "jeopardize" M&D's customer base.

Agency Rec. at par. 24-25.

Contrasting with hardship is the matter of environmental impact. The ozone monitors nearest to M&D's facility are located at 84th and Kedvale and at 103rd and Louella, both in Chicago. No ozone excursions were recorded at these monitors during 1986, but during 1987 one was recorded at the 84th and Kedvale monitor and two were recorded at the 103rd and Louella monitor (Agency Rec. at par. 17). Nevertheless, given the large number of VOM sources in the Chicago area and the multiple excursions beyond the ozone standard throughout the Chicago area during both 1987 and 1988, it is difficult to quantify M&D's contribution to this environmental problem. However, M&D's compliance program, if successful, will significantly reduce the amount of VOM emitted by its facility.

The parties contend that the requested relief can be granted consistent with the federal Clean Air Act (42 U.S.C.A. par. 7401 et seq., 1983), and that the variance should be approvable as part of the Illinois State Implementation Plan.

CONCLUSION

In view of the hardship here demonstrated, as well as the projected environmental impact during the term of this proposed variance, the Board finds that adequate proof has been presented that immediate compliance with the requirements of 35 Ill. Adm. Code 215.245(a) would impose an arbitrary or unreasonable hardship upon Petitioner. Accordingly, the relief will be granted with conditions consistent with the Illinois Environmental Protection Act.

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

ORDER

Petitioner, M&D Flexographic Printers, Inc., is hereby granted variance from 35 Ill. Adm. Code 215.245(a) for its facility located at 3600 W. 83rd Place, Chicago, Illinois, subject to the following conditions:

- 1) Variance begins on January 1, 1988 and expires on June 30, 1989, or when compliance with 35 Ill. Adm. Code 215.245 is achieved, whichever occurs first.
- 2) During the term of this variance, Petitioner 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 3600 W. 83rd Place, Chicago. The first quarterly report shall be due thirty (30) days from the date of this Order. The quarterly reports shall include quarterly VOM emission data from each printing press. 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 used during the flexographic printing process. The reports shall be submitted to the Agency at the following addresses:
 - (a) Manager, Permit Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
1340 N. Ninth Street
Springfield, Illinois 62702
 - (b) Manager, Field Operations Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
1701 S. First Avenue, Suite 600
Maywood, Illinois 60153

- 3) During the period of the variance VOM emissions from flexographic printing operations shall not increase more than 20%, on an annual basis, above 1987 levels.
- 4) Within 45 days of the date of this Order, Petitioner shall execute and forward to Joseph R. Podlewski, Jr., Enforcement Attorney, Illinois Environmental Protection Agency, 1701 S. First Avenue, Suite 600, Maywood, Illinois 60153, 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 87-182, October 20, 1988.

Petitioner

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 20th day of October, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board