

ILLINOIS POLLUTION CONTROL BOARD
March 23, 1989

CATTY CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 88-169
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ERIC E. BOYD, OF SIDLEY & AUSTIN, APPEARED ON BEHALF OF PETITIONER;

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

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

This matter comes before the Board upon a request for variance filed on October 20, 1988 by the Catty Corporation ("Catty"). Catty requests variance from the Board's regulations governing emissions from flexographic and rotogravure printing operations under 35 Ill. Adm. Code 215.245(a) until December 31, 1988.

On December 27, 1988, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that the requested relief be granted subject to certain conditions. Hearing was held on January 17, 1989; no members of the public attended.

BACKGROUND

Catty performs flexographic and rotogravure printing at its plant located in Huntley, McHenry County, where it prints patterns and labels on foil, cellophane and paper wrappers and packaging for merchandise. The plant operates six rotogravure and two flexographic printing presses which use inks containing volatile organic material ("VOM"). According to the Agency, Catty's annual VOM emissions in tons per year ("TPY") for the last three years were: 1986-143.5 TPY; 1987-95.6 TPY; and 1988-120.0 TPY (projected). (Agency Rec. at 2; R. at 11). Catty's testimony at hearing verifies these figures except that it states VOM emissions of approximately 153 TPY in 1987 and updates the actual VOM emissions for 1988 as 120.7 TPY. (R. at 13) This

discrepancy between the Agency's and Catty's 1987 figures is not addressed in the record.

Catty emits less than 1,000 tons of VOM yearly and was exempt from the Board's emission limitations for rotogravure and flexographic printing operations, until November 9, 1987. (35 Ill. Adm. Code 215.401, 402). When the Board amended its regulations governing VOM emissions from flexographic and rotogravure 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.

On April 27, 1988, Catty was issued a permit by the Agency for its printing and laminating presses until April 21, 1993. Pursuant to Section 215.245, Catty's permit was issued subject to the condition that VOM emissions from Catty's facility would not exceed 100 TPY in the absence of air pollution control equipment. (P. at Attach. "A"). Section 215.245(a) states in pertinent part:

The limitations of Subpart P shall apply unless the facility's aggregate uncontrolled rotogravure and/or flexographic printing press emissions of volatile organic material are limited by operating permit conditions to 90.7 Mg (100 tons) per year or less in the absence of air pollution control equipment or whose actual emissions in the absence of air pollution control equipment would be less than or equal to 90.7 Mg (100 tons) per year when averaged over the preceding three calendar years.

35 Ill. Adm. Code 215.245(a). The issuance of a permit with a special condition limiting Catty to 100 TPY of VOM emissions eliminated the need to demonstrate average VOM emissions of 100 TPY or less over the last three years. Since Catty's total VOM emissions were 84.9 tons as of September 23, 1988, it anticipated that it would exceed its VOM emission limitation of 100 TPY in 1988 and filed a petition on October 20, 1988 requesting this variance until December 31, 1988. (P. at par. 4).

In its petition, Catty states that it has been investigating substitute inks, containing lower VOM, for approximately two years. (P. at par. 6). As of January 12, 1989, Catty has spent \$43,126.29 for 1988 on research and development activity in reducing VOM emissions. (R. at 9).

Catty has been recently converting its new customers to water-based inks. Catty's second largest customer is "virtually all water-based" and it has converted its third and fourth largest customers to water-based. (R. at 19, 20). Catty is currently working on a water-based ink for its largest customer and was planning test runs in January of 1989 for a water-based ink to be used in an item for this customer. (R. at 17).

HARDSHIP AND ENVIRONMENTAL IMPACT

In addressing the matter of hardship, the Agency relies on Catty's statement that "immediate compliance would mean a total plant shutdown which would result in the loss of 40 jobs." (Agency Rec. at 6). Catty states in its Petition that to achieve immediate compliance with Section 215.245 by installing a capture and control system would impose "extreme and unnecessary costs on Catty". (P. at par. 8). Catty also stated at the hearing its concerns of losing its largest customer which would cause the plant to shut down. (R. at 16).

The Agency states in its Recommendation what regulations Catty will be required to meet if it is no longer exempt under Section 215.245:

If Catty cannot keep VOM emissions at 100 TPY or less, it will be required to meet the substantive requirements of Section 215.401:

a. Under Section 215.401(a) the inks would have to be reformulated so that the volatile fraction of the ink is either a) 25% or less by volume organic solvent and 75% or more by volume water or b) as applied to the substrate, less water, 40% or less by volume.

b. Under Section 215.401(c) and (d) a control system which provides at least a 90% destruction efficiency would have to be installed in conjunction with capture systems which will afford a 65% overall reduction in VOM emissions from Catty's rotogravure presses and a 60% overall reduction in VOM emissions from Catty's flexographic presses. (Agency Rec. at 4).

The Agency states that refusal to grant this variance would impose an arbitrary or unreasonable hardship upon Catty. (Agency Rec. at. 6).

Catty is located in McHenry County. Although McHenry County is an attainment county for ozone, it is situated in a major urbanized area (Chicago Metropolitan area), which is non-

attainment for ozone and is therefore included in the Board's regulations from which Catty is requesting this variance. (See R85-21). According to the Agency's Recommendation, the ozone monitor located closest to Catty is in Cary, approximately twelve miles northeast of Catty. In 1987 there was one day when the monitor recorded an ozone reading above 0.12 ppm. (Agency Rec. at 5).

Regarding compliance with federal law, the Agency states that:

Because Section 215.245 has not yet been approved by the United States Environmental Protection Agency ("USEPA") as part of the State Implementation Plan ("SIP") to attain and maintain primary and secondary air quality standards, the Agency does not believe that the variance requested, if granted, needs to be submitted to the USEPA as a revision to the Illinois SIP. Since the variance petition submitted by Catty Corporation is only to last until December 31, 1988, and Section 215.245 will not be approved by the USEPA by then, the Agency feels it is not necessary to obtain approval of the variance as a revision to the SIP by USEPA.
(Agency Rec. at 5).*

CONCLUSION

Based on the record before it, including environmental impact, the Board finds that Catty has presented adequate proof that compliance with Section 215.245 would impose an arbitrary or unreasonable hardship upon Catty. In so finding, the Board takes special note of Catty's assertions that it will be in compliance in 1989 and subsequent years. For these reasons, the Board will grant the requested relief, subject to conditions.

The Board notes that two conditions contained in the Agency's recommendation have been omitted from the Board's Order following this Opinion. Catty will not be required by the Board to submit a final report to the Agency; it is after the term of the variance has ended and also the Board considers this request by the Agency for a final report to be entirely reasonable and may be required pursuant to 35 Ill. Adm. Code Section 215.404 without a Board Order.

* The Board takes Administrative Notice that USEPA took final rulemaking action to disapprove the Chicago portion of the Illinois SIP for ozone, effective November 16, 1988. (53 Fed. Reg. 200, 40415 (1988)).

Secondly, the Agency's recommended condition of prospectively requiring Catty to be in compliance in 1989 or impose a production cap is surplusage. The Board's regulations require Catty to be in compliance in 1989 and subsequent years, absent a variance. The Board notes that compliance with the Agency's permit limiting emissions to 100 TPY is an alternative method to the three year demonstration required in Section 215.245. Also, this grant of variance is not an appropriate vehicle for imposing a production cap remedy for a potential future violation. Issues as to whether a violation has occurred and if so, what is an appropriate remedy must be resolved on their merits in another proceeding. In so saying, the Board cautions Catty that it gave it the benefit of the doubt in this case regarding the timing of its projections of non-compliance and its petition for variance in the last quarter of the year.

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

ORDER

1. Catty Corporation is hereby granted variance for the calendar year 1988 from 35 Ill. Adm. Code 215.245, subject to the following conditions:
 - A. This variance terminates on December 31, 1988.
 - B. No new high solvent coatings shall be introduced during the time of the variance.
2. Within forty-five (45) days after the date of the Board Order the Petitioner shall execute and send to:

Mr. Joseph R. Podlewski, Jr.
Enforcement Attorney
Illinois Environmental Protection Agency
1701 South 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 88-169, dated March 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

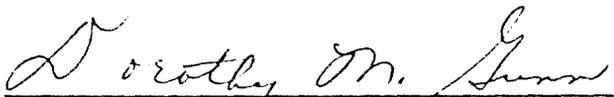
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Date

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 23rd day of March, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board