

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

PINES TRAILER CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 88-10
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

SAM K. GUPTA APPEARED ON BEHALF OF THE PETITIONER.

BOBELLA J. GLATZ APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on an amended Petition for Variance filed by Pines Trailer Corporation (Pines) on March 7, 1988. Pines originally filed a Petition for Variance on January 5, 1988. The Board issued an Order on January 21, 1988 stating that the January 5th petition was deficient. In response, Pines filed the March 7th petition.

Specifically, Pines is seeking variance from 35 Ill. Adm. Code 215.204(j)(3) and 215.211(b). According to Pines, it is requesting an "extension" for six months, until July 1, 1988, in which to comply with these regulations. Section 215.204(j)(3) imposes volatile organic material (VOM) limitations upon certain coatings which Pines utilizes. Section 215.211(b) provides that beginning December 31, 1987, these limitations are applicable to emission sources located in attainment counties that are not adjacent to non-attainment counties. Pines' facility is located within Henry County which falls under 215.211(b) applicability. In other words, it appears that Pines is requesting that its variance extend from December 31, 1987 to July 1, 1988. The Illinois Environmental Protection Agency (Agency) filed its Recommendation on April 22, 1988. A hearing was held in this matter on May 24, 1988; no members of the public were present.

On June 30, Pines filed a motion requesting that new information be considered by the Board in making its determination. Pines stated that it has found a compliant coating. It also had a strike during the month of June which resulted in 16 drums of non-compliant coating remaining in its inventory. Pines essentially asked that it be allowed to use up this paint by August 1. In the interest of administrative economy, the Board will accept this motion and extend the variance until August 1, 1988. The Board notes that the Agency

has already anticipated that this paint would be used and denying the motion would create the need to dispose of the paint.

According to Pines' amended petition, Pines manufactures "over the highway truck trailers" at its facility located in Kewanee. The final part of this production process involves the painting of these trailers. Pines outlines this operation as follows:

1. Cleaning of the trailers-steel components should be free of dirt and oil.
2. Priming of the components with Epoxy Ester primer, 1 coat application.
3. Undercoat or tectyl application, depending upon customer specifications.
4. Top coat primed components, 1 coat application.
5. When top coat is tack free, trailers are moved out.

(Am. Pet., p. 2)

According to a statement submitted by Pines at hearing, Pines utilized coatings with the following VOM content in 1987:

Undercoat	3.02 lbs/gal
Tectyl	3.65 lbs/gal
Primer M(2 Part)	3.67 lbs/gal
Top Coat (Alkyd Enamel)	3.78 lbs/gal

(Pet. Exh. A)

The applicable standard imposed by Section 215.204(j)(3) is 3.5 lbs/gal of VOM.

In September 1987, Pines developed specifications which requires the coatings to withstand a 500-hour salt spray test. Pines states that these specifications were adopted in response to a large warranty payment that was made to one of Pines' customers.

Pines asserts that it has been able to utilize a compliant tectyl and that compliant top coats are now presently available. Pines claims that the only remaining compliance problem concerns the primer. Pines also states that one primer manufacturer is currently conducting tests on primers which would not only be in compliance with Section 215.204(j)(3) but also meet Pines' specifications. Pines intends to use coatings which pass these tests.

At hearing, Mr. Sam Gupta, Director of Industrial and Manufacturing Engineering for Pines stated that Pines would be in compliance with Board regulations by July 1, 1988. (R. 4). He further stated:

And if for any reason we cannot meet the deadline of July 1, yes, we will lower our specifications and say go to a 400 or a 300-hour salt spray testing which a lot of manufacturers have the paint available that is 3.5 VOC paint and we will use that until we can find a coating which at the same time is in compliance plus meets the 500 hour salt spray.

(R. 9)

Pines recently experienced a large increase in its production levels. In 1986, 3,200 units were produced, whereas 6090 units were manufactured in 1987. (Am. Pet., Attachment). Pines employs approximately 300 to 400 people and is the largest employer in Kewanee. According to Pines, the only method for compliance is to find appropriate coating which meets the 3.5 lbs/gal standard. Pines also claims that if a variance is denied, it will either have to shut down, or cut back its production to pre-1986 levels. According to Pines, "this will mean a drastic reduction in [its] workforce." (Am. Pet. 6).

The Agency, in its Recommendation, estimates that control equipment which would provide compliance would cost Pines \$27,660. The Agency claims that Pines' Petition did not specify the costs it would incur if forced to use compliant coatings. (Ag. Rec., p. 5). The Agency's Recommendation requested that the variance be denied because of the lack of emission data and the lack of assurance that compliance would be achieved by July 1, 1988. (Ag. Rec., p. 6).

However, at hearing, the Agency changed its position so that it now supports a variance for Pines. (R. 6).

At hearing, the Agency provided revised emission calculations. The calculations show that Pines' emissions during the period of variance are less than what the Agency originally calculated. Under a "worst" case scenario, when Pines is only producing types of trailer units which require the higher non-compliant coatings, the Agency calculated that Pines would emit only 5.8 tons of excess VOM during a six-month variance. When calculating emissions under more normal operating conditions, the Agency estimated that Pines would emit only 3.7 tons of VOM over the allowable limit during a six-month variance. (Resp. Exh. A).

The Agency was also persuaded by Pines' commitment to use compliant coatings after July 1, 1988 even if product specifications must be lowered. (R. 6).

Pines is located in Henry County which is an attainment county for ozone. According to the Agency, the nearest air monitor, located in Rock Island County, has not recorded an ambient air ozone standard exceedance in the past seven years. Also, the Agency does not believe the U.S. Environmental Protection Agency would disapprove of a variance grant (as a part of Illinois' State Implementation Plan) for air quality reasons. (Ag. Rec. p. 5). Given the minimal amount of emissions in excess of the allowable limit that has been emitted by Pines in the past six months and the fact that Pines will be in compliance after August 1, 1988, the Board finds that the environmental impact resulting from a variance would be minimal.¹ Pines has already emitted just about all of the excess emissions upon which it bases its variance request; a variance grant will not change that fact.

In light of all the circumstances, the Board finds that to deny Pines a variance would constitute an arbitrary or unreasonable hardship. Because of the relatively small amount of excess emissions and imminent compliance by Pines, the Board finds no reason, in this instance, to subject Pines further to any liability concerning the time during which Pines has pursued this variance. As a result, the Board will grant Pines a variance from January 5, 1988 until August 1, 1988.

Finally, the Board will address its recent variance denial in Transcraft Corporation v. Illinois Environmental Protection Agency, PCB 87-194 (May 5, 1988). Although Transcraft Corporation (Transcraft) which manufactures platform semitrailers was also out of compliance with 215.204(j), the facts in that case are quite distinct from the instant matter. Most importantly, Transcraft's compliance plan was solely dependent upon its coating manufacturers. That is, Transcraft claimed that it would be in compliance by December 31, 1988; however, it also stated that it could not be specific as to when the manufacturers

¹ In today's Opinion, the Board is merely addressing the effect of Pines' non-compliance with 35 Ill. Adm. Code 215.204(j)(3) in the context of a variance proceeding. The Agency noted in its Recommendation that it has referred complaints by some of Pines' workers to the Occupational Safety and Health Administration. Evidently, the workers complain of lead and other noxious emissions in the workplace. The Agency states that Pines' emissions to the atmosphere are not toxic given the amounts that are released. (Ag. Rec. p. 4). This Opinion should not be construed in any way as addressing the merits of these workers' complaints.

would develop a compliant coating that would meet Transcraft's specifications. In contrast, Pines has provided the Board with a stronger, date-certain commitment for the use of compliant coatings. Pines has assured that it would be in compliance six months earlier than what Transcraft proposed. Also, Transcraft appears to have been emitting VOM at a rate of approximately 27 tons per year in excess of the allowable limit. This rate of excess emissions is more than double that of Pines.

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

ORDER

The Board hereby grants Pines Trailer Corporation (Pines) variance from 35 Ill. Adm. Code 215.204(j)(3) and 215.211(b) from January 5, 1988 until August 1, 1988 subject to the following condition:

Within forty-five days of the date of this Order, Pines shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. This Certification shall be submitted to the Illinois Environmental Protection Agency at 2200 Churchill Road, P.O. Box 19276, Springfield, IL 62794-9276, Attn. Bobella Glatz. This variance will be void if Pines 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) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 88-10, adopted June 30, 1988.

Petitioner

Authorized Agent

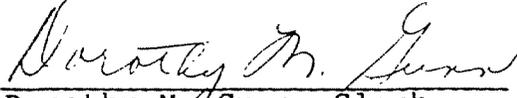
Title

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 30th day of June, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk

Illinois Pollution Control Board