

ILLINOIS POLLUTION CONTROL BOARD
January 9, 1986

FEDDERS-USA,)
)
 Petitioner,)
)
 v.) PCB 83-47
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. JEFFERY FORT AND M. MS. THERESE YASDICK, MARTIN, CRAIG,
CHESTER & SONNENSCHNEIN APPEARED FOR PETITIONER;

MR. WILLIAM INGERSOLL AND MS. SUSAN SCHNEIDER, APPEARED FOR
RESPONDENT.

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

This matter comes before the Board upon an April 11, 1985 Second Amended Petition for Variance filed on behalf of Fedders-USA. Fedders seeks variance from 35 Ill. Adm. Code 215.204(h) which limits the amount of volatile organic material (VOM) delivered to the coating applicator for Large Appliance Coating to 2.8 lbs./gal. Fedders requests that the variance run from October 1, 1982 to April 1, 1986. (Second Amend. Pet. p. 1). The Illinois Environmental Protection Agency (Agency) filed its recommendation on May 20, 1985, advising that the variance be denied. Hearing was held on August 28, 1985 and briefs were filed by Fedders and the Agency on October 16 and December 3, 1985, respectively.

Fedders operates a plant in Effingham, Illinois which contains 1.1 million square feet of floor space and employs approximately 700 people in the production of room air conditioners. A portion of the external metal parts used in constructing the air conditioners are painted in a flow coater operation in which the part to be painted is flooded with paint from nozzles on all sides and then transported to a vapor chamber. In the vapor chamber, excess paint is collected and recirculated to the flow coater and the solvent vapors are exhausted to the atmosphere. After leaving the vapor chamber, the parts enter a bake oven in which any remaining solvent is flashed-off. The parts remain in the bake oven for approximately fifteen minutes at 375 degrees Fahrenheit. (Second Amend. Pet. p. 2).

The flow coat operation applies a 0.6 mil layer of acrylic epoxy paint to the parts in a single pass. The paint utilized

contains 4.669 lbs./gal. of VOM. Id. However, the paint must be diluted with a solvent in a ratio of four parts paint to one part solvent in order to be used in the flow coater. This solvent contains 7.424 lbs./gal. of VOM. Additional solvent must be added to the paint upon recirculation to maintain the 4 to 1 ratio. Based on 1984 production figures, Fedders used 54,419 gallons of paint and solvent containing a total of 352,703 lbs. of VOM giving a VOM content per gallon of 6.48 lbs. (Second Amend. Pet. pp. 2-3).

Fedders seeks variance from 35 Ill. Adm. Code 215.204(h) to allow the VOM content of its paint delivered to the coating applicator to exceed the 2.8 lbs./gal. standard and requests that if the variance is granted, it be given retroactive effect and run from October 1, 1982 to April 1, 1986. The issue before the Board is whether denying the requested variance would impose an arbitrary and unreasonable hardship on Fedders by requiring it to comply with the 2.8 lbs./gal. standard. For the following reasons, the Board finds that denying Fedders variance from 35 Ill. Adm. Code 215.204(h) constitutes an arbitrary and unreasonable hardship.

ENVIRONMENTAL IMPACT

Fedders plant is located in Effingham County which is an attainment area for ozone. (R. 44, 97). There were no monitored violations of the Ambient Air Quality Standard for ozone during 1984. (Rec. p. 4). Fedders and the Agency disagree on the extent the emissions from Fedders' plant exceeds its allowable emissions. The disagreement centers on whether the allowable emissions should be calculated using a volumetric approach or a solids approach. The parties assert that if the allowable emissions are calculated using a solids approach, then the excess emissions are approximately 154 tons/yr. (Rec. p. 4). In contrast, if the allowable emissions are calculated using a volumetric basis, then the excess emissions are approximately 40 tons/yr. (Pet. Brief p. 11). The 40 tons/yr. of excess emissions are predicated upon Fedders substituting a water-based glue in its glue booth operations and shutting down its degreaser used on internal sheet metal parts. Id. At this time, the Board notes that it is not specifying that either method for calculating the allowable emissions is correct. Notwithstanding this disagreement, the Agency admits that Fedders' excess VOM emissions are not likely to cause an exceedance of the ambient air quality standard for ozone in the Effingham area. (Agency Brief p. 4). Also, the Board notes that Fedders' emissions will have very little impact on the ambient air quality in other areas because of distance. Therefore, the Board finds that the environmental impact of granting Fedders variance will be minimal.

HARDSHIP

Over the past ten years, Fedders asserts that it has experienced a series of economic setbacks resulting in aggregate losses of over \$162 million. Fedders also contends that over the last few years it has closed or sold several of its facilities and consolidated its manufacturing operations into three facilities located in Effingham, Illinois; Buffalo, New York, and Frederick, Maryland. (R. 149). Compliance with 35 Ill. Adm. Code 215.204(h) will require the installation of a new paint system ranging in price from \$0.9 to \$1.4 million which, because of severe capital restraints, Fedders asserts it cannot afford. (R. 50). Fedders claims it has been exploring various solutions to the paint problem the most promising of which is changing to a water-based paint.

Fedders contends that it has contacted several paint companies who expressed confidence at one time or another that they could develop a paint that would comply with Illinois regulations. (R. 51). Several trial runs were conducted at Fedders' plant by the paint companies, none of which produced an acceptable product. Id. However, one paint company, Man-Gil Chemical Co., is close to developing a water-based paint which would allow Fedders to meet the requirements of the Board's regulations and at the same time produce a satisfactory product. (Second Amend. Pet. p. 6). Fedders claims that based on the foregoing, it has demonstrated diligence in seeking a compliance coating. Id.

The Agency agrees with Fedders' assertions but cautions that Man-Gil's confidence that it can develop a compliance water-based paint may be unfounded at this time. (Agency Brief p. 7). The Agency contends that compliance by installing a new paint system is not necessarily an arbitrary and unreasonable hardship but is only more expensive than delaying until such time a compliance water-based paint can be developed. The Agency also asserts that Fedders has not proposed anything which it will do to attain compliance, rather, Fedders merely offers to report on its progress to secure a compliance coating. (Rec. p. 5). Therefore, the Agency requests that the variance be denied.

The Board finds that Fedders has demonstrated diligence in seeking a compliance coating and that immediate compliance with 35 Ill. Adm. Code 215.204(h) requiring the installation of a new paint system would be financially unattainable for Fedders at this time. Furthermore, since the environmental impact of Fedders emissions will be minimal, the Board finds that denying Fedders' variance from 35 Ill. Adm. Code 215.204(h) constitutes an arbitrary and unreasonable hardship and will grant the variance with the requested retroactive effect.

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

ORDER

Fedders-USA located in Effingham, Illinois is hereby granted variance from 35 Ill. Adm. Code 215.204(h), subject to the following conditions:

1. The variance period will run from October 1, 1982 to April 1, 1986.
2. Fedders-USA shall cease using a solvent based glue in its glue booth operation.
3. Fedders-USA shall shut down its degreaser used on internal sheet metal parts.
4. The volatile organic material content of the paint and solvent mixture delivered to the flow-coater on the Epon paint lines shall not exceed 6.48 lbs./gal.
5. Within 45 days of the date of this Order, Fedders-USA shall execute and send to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
2200 Churchill Road
Springfield, IL. 62706

a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions.

6. This 45 day period will be held in abeyance for any period during which this matter is being appealed. The form of the certification shall be as follows:

CERTIFICATION

Fedders-USA hereby accepts and agrees to be bound by all terms and conditions of the Order of the Illinois Pollution Control Board in PCB 83-47, dated January 9, 1986.

Fedders-USA

By: Authorized Agent

Title

Date

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 9th day of January, 1986 by a vote of 7-0.

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