

Variances are to be extended only upon a showing of satisfactory progress toward compliance during the period of the original variance. During 1982, Van Leer's average VOM content for interior coatings was 5.29 lbs/gal while exterior coatings averaged 4.56 lbs/gal. 1983 averages were 5.32 and 4.48, respectively, and 1984 averages were 5.31 and 4.30, respectively (Pet. Sup. p. 3). Since 1983, Van Leer has reduced the number of interior coating formulations from more than 20 to eight, and has eliminated those with the highest VOM content (Pet. p. 14). It is also currently testing three new formulations which it believes may allow full compliance (Pet. Sup. pp. 4-5). Van Leer has also installed a new hot airless spray system increasing transfer efficiency and lowering emissions and collection devices further reducing emissions. Based on these improvements, the Agency concludes that Van Leer "has made very significant progress towards reducing VOM emissions and achieving compliance with Section 215.204(j)" (Rec. p. 6). This progress is reflected by the fact that excess emissions have been reduced by 94 tons since 1983, a reduction from 65% over allowable in 1983 to 33% over allowable in 1985 (Pet. Sup. p. 5).

Van Leer is located in Cook County, and as such is in a non-attainment area. However, since Van Leer's emissions are expected to continue to decline and will be required to be at compliance levels by the end of the year, the Agency concludes that "the extension ... sought by Van Leer should not cause any increased problems" (Rec., p. 9). Further, Van Leer must comply with its episode action plan which requires the reduction of emissions during periods of high ozone concentrations, thereby mitigating any adverse health effects.

Van Leer alleges that denial of variance would result in an arbitrary or unreasonable hardship since compliance coatings currently do not exist and add-on controls are unjustifiably expensive. The Agency agrees based upon the substantial reduction in emissions since 1983, and the capital cost of \$4,000 - \$9,000 per ton and operating cost of \$2,600 - \$3,100 per ton for add-on controls (Rec., pp. 10-11). In this regard, the Agency also notes that Van Leer alleges that it has spent \$476,000 during its previous variance. These expenditures were made to improve coating transfer efficiencies (\$88,000), to test high solids coatings (\$75,000), due to losses from rejected containers coated with high solids formulations (\$40,000), and for the installation of a new drum parts booth to reduce overspray, increase transfer efficiency and improve lining application (\$272,000) (Pet., p. 8).

Van Leer intends to achieve compliance through the internal offset of interior coatings by exterior coatings pursuant to Section 215.207 (Pet., p. 4). In particular, Van Leer proposes the following compliance strategy:

- a) Continued conversion to water borne exteriors. (Program scheduled for completion by March 30, 1987; estimated effect -20 tons excluding that achieved to date in 1986.)
- b) Introduction of newly available low VOM water borne linings, with a target for the period ending December 31, 1987 of a 25% change in order to ensure compliance with each line. (Estimated effect by December 31, 1987 -30 tons.)
- c) Continuation of conversion of all (exterior) roll coats to compliance materials. (Target date -- July 1987; estimated effect -10 tons.)
- d) Installation of new centrifugal lining spray heads for drum lining. (Target date -- June 1987; estimated effect -20 tons.)
- e) Installation of new centrifugal lining head for pail lining. (Target -- November 1987; estimated effect -3 tons.)
- f) Installation of new high efficiency hot airless guns into drum painting line. (Target date -- April 1987; estimated effect -3 tons.)
- g) Installation of high efficiency air assisted airless guns into the pail and drum parts booths. (Target date -- December 1987; estimated effect -8 tons.)

(Pet. Supp., par. IV(a) and Rec., pp. 12-13)

Van Leer estimates that based upon the steps already taken to come into compliance, the emission figures for the first half of 1986, and the successful completion of its proposed compliance plan, typical annual emissions should be as follows:

Interior coatings	234.4 Tons
Exterior coatings	199.8 Tons
Total	<u>434.2 Tons</u>
Allowable	319.0 Tons

Excess	115.2 Tons
Allowance for natural oven incineration	53.2 Tons (as per 1983/5 variance)
	<u>62.0 Tons</u>
Reductions per program	101.0 Tons
Within compliance	<u>39.0 Tons</u>

(Pet. Supp., p. 9 and Rec., p. 13).

The Agency, as well as Mr. Giammanco, question Van Leer's allowance of 53.2 tons for natural oven incineration. Van Leer's witness testified at the hearing in PCB 83-133 that a 20% natural incineration takes place in the type of gas fired ovens that Van Leer operates, and that "with split of 50/50, spray booth to oven" 10% of the solvents going into the oven are incinerated naturally (Pet. C, p. 9). Even accepting Van Leer's testimony to the extent that an allowance for natural incineration is warranted, the allowance should be 43.4 tons rather than 53.2 tons (Rec., p. 14). However, even subtracting out this reduction entirely, Van Leer should be very close to full compliance. Further, Van Leer states that should it become evident it will not be able to achieve the identified reductions, it will commit to incineration, and that decision will be made by October, 1987. Van Leer further states that investigations are continuing to determine the most economical way to introduce incineration onto its lines (Pet. Supp., p. 8).

The Agency is concerned that should incineration become necessary in order to achieve compliance, an October deadline for that decision will not allow sufficient time for the add-on controls to be installed and operating by January 1, 1988. This concern arises from the fact that compliance by December 31, 1987, is required under the Federal Clean Air Act, and the Board cannot grant a variance to Van Leer beyond that date.

The Agency, therefore, recommends that Van Leer be required to make its decision to install add-on control equipment or continue with its compliance program by July 1, 1987. Further, the Agency recommends that Van Leer begin an engineering project study for the proposed add-on controls immediately to further insure that the equipment is installed and in operation by January 1, 1988, should it be necessary in order to achieve compliance with Section 215.204(j) (Rec., p. 15).

Besides questioning Van Leer's allegations regarding natural incineration, Mr. Giammanco questions whether the installation of add-on control would impose an arbitrary or unreasonable hardship

(Pub. Ex. No. 1). He contends that his company, Central Can Company, is a direct competitor of Van Leer, it uses the same manufacturing processes, it expended large sums of money for add-on controls to come into full compliance without going out of business, and that Van Leer, with its considerably greater resources, could do so as well (Pub. Ex. No. 1, pp. 2-3, 14-15). He further argues that Van Leer failed to fully comply with its previous variance and that granting an extension would result in a continued competitive advantage to Van Leer (Pub. Ex. No. 1, pp. 10-11).

Van Leer responded to Mr. Giammanco's arguments on November 24, 1986. Van Leer contends that Central Can made a mistake in installing add-on controls and now wishes to force all its competitors to make the same mistake in order not to be at a competitive disadvantage (Response, p. 2). Van Leer contends that its operations differ significantly from Central Can's, that its efforts at compliance have been working, that it is optimistic that full compliance can be reached by the end of the year, and that its hardship has been justified (Response, pp. 2-8).

The Board very much appreciates the time and effort that Mr. Giammanco spent on bringing his concerns before the Board. However, variance decisions are made on a case-by-case basis, and the fact that others have complied with the general regulation from which variance is requested is relevant to that determination only insofar as such compliance indicates that the petitioner would not suffer an arbitrary or unreasonable hardship.

The Board cannot find on the basis of Mr. Giammanco's submission that Van Leer has failed to demonstrate an arbitrary or unreasonable hardship, or that it has failed to make reasonable progress toward compliance during the previous variance period. Rather, the record establishes that Van Leer has been in substantial compliance with the previous variance. While Mr. Giammanco is correct that Van Leer has exceeded the VOM limitation of the previous variance by about 1 1/2% in 1985, the Board does not find that discrepancy to be significant enough to warrant denial of variance (Pub. Ex. No. 1, p. 11). Further, Mr. Giammanco's assertion that afterburners would be just as reasonable for Van Leer as it is for Central Can since the manufacturing processes are similar has been rebutted by Van Leer (Response, p. 3), and the Board cannot find that the facilities and circumstance of the two companies are so similar as to warrant denial of variance.

The Board has noted with concern Ex. 6 of Pub. Ex. No. 1 which shows little progress toward compliance by Van Leer since 1978. While this does not show a lack of progress during the period of the previous variance (during which Van Leer improved

from 165% of allowable in 1983 to 149% in 1984 and 144% in 1985), it does tend to indicate that Van Leer's optimism regarding to potential for reaching compliance without the use of an afterburner by the end of 1987 may be misplaced in that Van Leer is presently farther from compliance than it was in 1978. However, there are several possible reasons for this, and the Board believes that Van Leer should be allowed to continue with its compliance plan until July 1, 1987, at which time it must either commit to the installation of afterburners or have reasonable certainty that it can achieve compliance without such installation by the end of 1987. One way or another Van Leer must comply by that time or be subject to enforcement.

The Board concludes that Van Leer has demonstrated that the denial of variance would cause an arbitrary or unreasonable hardship and will grant variance subject to the conditions recommended by the Agency, which Van Leer apparently finds acceptable.

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

ORDER

Van Leer Containers, Inc. is hereby granted an extension of variance from 35 Ill. Adm. Code 215.204(j), 215.211 and 215.212 until December 31, 1987, subject to the following conditions.

1. By March 30, 1987, Van Leer shall have converted 80% of its spray applied to water borne coatings;
2. By April 30, 1987, Van Leer shall have installed new high efficiency hot airless spray guns into its drum painting line;
3. By June 30, 1987, Van Leer shall have completed installation of new centrifugal lining spray heads for drum interior coating;
4. By July 31, 1987, Van Leer shall use only coatings with volatile organic material content of 3.5 lbs/gal or less when roller coat applying exterior coating other than clear over varnish;
5. By November 30, 1987, Van Leer shall have completed installation of a new centrifugal lining spray head for pail interior coating;
6. By December 31, 1987, Van Leer shall have installed high efficiency air assisted airless spray guns into its pail and drum parts booths;

7. Van Leer shall immediately commence an engineering project study for add-on control equipment at its Alsip facility;
8. By July 1, 1987, Van Leer shall make a decision to continue with its compliance program or to commence the installation of add-on control equipment and shall immediately apprise the Agency of its decision. Should Van Leer determine that the installation of add-on controls is necessary to achieve compliance with 35 Ill. Adm. Code 215.204(j), such controls shall be installed and in operation by December 31, 1987;
9. Within 28 days of the date of this Order and every third month thereafter, Van Leer shall submit to the Agency written reports detailing all progress made in achieving compliance with Section 215.204(j). Said reports shall include information compiled on a monthly basis on coating materials usage; amount of reformulated coating in use; actual and allowable VOM emissions; the quantity of VOM reductions during the reporting period; and actual operating hours. Such reports shall also describe in detail the progress made during the reporting period in the implementation of the elements of its compliance program, including any changes or modification to the program; shall describe in detail the progress made by Van Leer in developing and testing reformulated interior coatings, including product quality and customer acceptance; and shall include any other information which may be requested by the Agency. The reports shall be sent to the following addresses:

Environmental Protection Agency
Division of Air Pollution Control
Control Programs Coordinator
2200 Churchill Road
Springfield, Illinois 62706

Environmental Protection Agency
Division of Air Pollution Control
Region 1, Field Operations Section
1701 South First Avenue
Suite 600
Maywood, Illinois 60153

10. Within 28 days of the date of this Order, Van Leer shall apply to the Agency for renewal of its operating permits pursuant to Section 201.160(a); and
11. Within 45 days of the date of this Order, Van Leer shall execute a Certification of Acceptance and Agreement to

be bound to all terms and conditions of the variance. Said Certification shall be submitted to both the Agency at the addresses specified in Condition 9, above. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

(Petitioner), hereby accepts and agrees to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 85-227, dated January 8, 1987.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

Board Member J. Marlin concurs.

Board member B. Forcade dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 8th day of January, 1987, by a vote of 5-1.

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