

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1986

CLASSIC FINISHING COMPANY, INC.,)
)
Petitioner,)
)
v.) PCB 84-174(B)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

MS. DIXIE LEE LASWELL OF GESSLER, WEXLER, FLYNN, LASWELL & FLEISCHMANN APPEARED ON BEHALF OF PETITIONER.

MR. JOSEPH R. PODLEWSKI, JR. APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon the November 21, 1984 filing by Classic Finishing Company, Inc. (Classic) of a petition for variance from 35 Ill. Adm. Code 215.204(c) [volatile organic material (VOM) air emission limitation for paper coating]. Amended petitions were filed on March 14, July 22 and October 21, 1985. The Illinois Environmental Protection Agency (Agency) filed recommendations to deny on July 8 and December 2, 1985. Hearing was held on December 17, 1985 in Chicago, Illinois at which time Classic outlined its fifth compliance plan. Classic is now in compliance with Section 215.204(c) as of January 1, 1986 and implicitly requests retroactive relief to November 21, 1984. Some documents in the record were previously determined by the Board to be trade secrets (February 7, 1985 Order in PCB 84-174, Docket A; February 6, 1986 Order in PCB 84-174 Docket C).

Classic is an Illinois corporation located in a predominantly industrial area at 4500 West Division Street, Chicago, Illinois. The facility employs 71 people. In March 1985 the assets of Classic were acquired by Graphic Converting, Inc. (Graphic). Classic is now a wholly owned subsidiary of Graphic. Its business is a highly specialized one which laminates already printed material such as greeting cards, book jackets and annual report covers. There is only one other such company in the Chicago area (R. 6).

The equipment at the facility coats and laminates paper and vinyl sheets. It includes seven roll coaters, four laminating machines and one surlyn coater. The roll coating machines consist of a coating head with fountain followed by either an infra-red or gas-fired oven. One of the seven roll coaters applies and dries special developmental coatings with ultraviolet

(UV) light. At the time of hearing another roll coater was being converted to UV operation (R.50). There are no VOM emissions when UV light is used. The topcoat roll coater uses water-based heat-seal coatings which produces no VOM emissions. The remaining four roll coaters now use compliant VOM coatings (R.48-50). The four laminating machines use liquid adhesives which do not contain VOM. The make-up used in the laminating process likewise contains no VOM.

Section 215.204(c) provides the VOM limitation under which Classic falls:

No owner or operator of a coating line shall cause or allow the emission of volatile organic material to exceed the following limitations on coating materials, excluding water, delivered to the coating applicator:

	<u>kg/l</u>	<u>lb/gal</u>
c) Paper Coating	0.35	(2.9)

Compliance with this VOM emission limitation was to be achieved by December 31, 1982. 35 Ill.Adm.Code Appendix C.

Classic has calculated its actual, allowable and excess VOM emissions from its coating lines for the years 1983 and 1984 as follows (2nd Amended Petition, Appendix F):

	<u>1983</u>	<u>1984</u>
Actual tons VOM	270.3	229.4
Allowable tons VOM	53.5	67.9
Excess tons VOM	<u>216.8</u>	<u>161.5</u>

Total plant VOM emissions from Classic have decreased since 1983 even though usage has increased. Classic exceeded allowable VOM emissions in 1983 and 1984. At hearing a Classic witness testified that in 1984 the laminator adhesives used contained less than 2.9 lbs. VOM per gallon less water (R.18-19, Ex.2). Currently Classic is using an exempt laminator adhesive solvent which contains no VOM (R.19, Ex. 3 at 7).

Classic's efforts to reduce its VOM emissions dates back to 1978. It investigated alternatives such as the installation of a thermal/catalytic control system, reformulation of coatings to reduce the VOM concentration, and installation of UV equipment. A thermal/catalytic control system would have cost \$600,000 (R. 28) and was considered too expensive by Classic. Classic eventually settled on a plan of reformulating coatings plus the installation of some UV equipment.

Besides contracting out, Classic itself has tried to reformulate coatings and adhesives. "A water-based coating developed in 1981 by a chemist retained by Classic failed in January of 1982 but a developed high solids coating proved to be

satisfactory." (Stip. at 2). The reformulation process proved difficult because of the number of different coatings and adhesives used. "[S]ince 1982 Classic has attempted to use twenty-five different reformulated coatings and adhesives. Of the twenty-five reformulations, only eight were found to be acceptable." [Stipulation of Facts (Stip.) at 2].

Classic estimates that it has spent between \$12,000 and \$15,000 on its reformulation efforts since 1978. Id. Needed UV equipment for the final compliance plan will cost between \$250,000 and \$300,000 (2nd Am.Pet.at 7-8, R.39). Lastly, Classic estimates a business loss of between \$200,000 to \$300,000 because of customer dissatisfaction with the reformulated coatings (Stip. at 2; 2nd Am.Pet. at 7,9).

Classic has changed its compliance plan five times during this proceeding. The first compliance plan was presented in Classic's original petition for variance filed November 21, 1984. It provided that compliance would be achieved by December 31, 1987 by reformulating coatings and adhesives. The second compliance plan in the revised variance petition filed March 14, 1985, provided that compliance would be achieved by December 31, 1985 by reformulating coatings and adhesives and by installing add-on controls. Classic's third compliance plan, presented in a July 22, 1985 amended revised petition for variance, envisioned compliance by December 31, 1985 by reformulating all adhesives and most coatings. In addition, a non-compliant coating line would be operated by obtaining an alternative control strategy permit from the Agency (Part 202). Classic's fourth compliance plan, presented in an October 21, 1985 second amended revised petition for variance, again provided that compliance would be attained by December 31, 1985. Under this plan, Classic's laminators would apply compliant adhesives and annual coating line emissions would be limited to 25 tons. This fourth plan was legally flawed because the 25 ton limit applies to total plant VOM emissions, not just those from a specific source within the plant, such as a coating line. 35 Ill.Adm.Code 215.206(a).

At the hearing of December 17, 1985 Classic presented its fifth compliance plan (R.37-42, 48-50). Classic proposed to comply with Section 215.204(c) by two methods. First, the laminators would use adhesives containing a non-VOM exempt solvent by December 31, 1985. Second, new reformulated compliant coatings would be used by December 31, 1985 in order for the facility to achieve overall compliance by January, 1, 1986. Classic has implemented this fifth compliance plan and is now in compliance.

Classic is situated in Cook County which is a nonattainment area for ozone. The state and federal ambient air quality standard for ozone is 0.12 parts per million. The nearest Agency air monitoring station is at Lincoln Park Zoo, 2200 North Cannon, Chicago, approximately five miles from Classic's facility. One violation of the ozone standard was recorded at this station in

1983 and one in 1984 (Stip.at 3). The parties have stipulated that it is difficult to assess Classic's contribution to these violations. Id. Classic is now in compliance with Section 215.204(c).

Classic argues that to have complied before December 31, 1985 with Section 215.204(c) would have imposed on it an arbitrary or unreasonable hardship because the costs of compliance greatly exceeded any benefits resulting from earlier compliance (2nd Am.Pet.at 8,10; Classic Brief at 6-7). Classic further argues that had it been forced to comply immediately with Section 215.204(c), a shutdown of a substantial portion of the facility, resulting in a loss of 71 jobs, would have occurred (R.42-3, Classic Brief at 9).

The Agency, noting that Classic is in compliance and that the relief being asked for is retroactive relief, addresses the issue of whether there is sufficient hardship by addressing whether the requisites for a retroactive variance have been met. First, the Agency, citing Borden Chemical Co. v. IEPA, (PCB 82-82, December 5, 1985) and Quaker Oats Co. v. IEPA, 59 PCB 25 (PCB 83-107, July 19, 1984) argues that there have been no exceptional circumstances as articulated in Borden and Quaker Oats to warrant the grant of retroactive relief in this case. Thus, the Agency argues that retroactive relief is requested only because of Classic's repeated changes in its compliance plan (Ag. Brief at 4).

Second, the Agency questions that even if there are exceptional circumstances, at which point in time does Classic become entitled to retroactive relief? The Agency asserts that the necessary elements for variance relief -- a technically feasible plan to attain compliance by a date certain and the existence of an arbitrary or unreasonable hardship arising from immediate compliance -- are not present (Ag.Brief at 4-5). While each compliance plan is described above, the Agency's comments as to each compliance plan will be described below.

The Agency argues that retroactivity cannot be applied to November 21, 1984 because that petition had been filed by a previous owner and that any hardship to that owner could not be asserted by Graphic, the new owner as of March 1, 1985. As for the March 14, 1985 petition, the Agency argues that Classic did not allege an arbitrary or unreasonable hardship. Even if it did, such hardship was self-imposed, hypothesizes the Agency, if add-on controls were available and would have led Classic to compliance if installed. Classic waited for two years after December 31, 1982, the compliance deadline, to even file a variance petition (Agency Rec. of July 11, 1985 at 8-9). Further, Classic's new owners decided to abandon the add-on control compliance plan after a few months upon determining that such controls cost too much money (Agency Brief at 6).

The Agency asserts that relief should not be granted retroactively to the July 22, 1985 amended petition because the compliance plan therein lasted only 39 days. Id. (See Classic Response to Agency motion filed August 29, 1985). The Agency asserts that retroactive relief should not be granted back to the October 21, 1985 amended petition because the compliance plan therein was legally flawed (Agency Brief at 7).

Classic's response is that despite many changes to its compliance program, the ultimate date for compliance has remained unchanged. It states:

[t]he change in compliance strategies became necessary as a result of the ongoing studies and efforts to achieve unquestioned compliance with the Board's emission standards. However, while the means to achieve unquestioned compliance may have changed, the compliance date did not change, and, in fact, greater reductions in VOM emissions were achieved than could have been achieved under the strategy of add-on controls. [Classic Brief at 7-8, emphasis in original].

Classic also mentioned that compliant coatings only recently became available and to have immediately complied would have resulted in the closing of a substantial portion of the facility.

The Agency counters that a firm compliance date is only one of many requisite elements for variance relief (Agency Brief at 7). The Agency argues that the fact that Classic is now in compliance should have no bearing on its eligibility for variance relief. If not entitled to relief at the time of filing the different amended variance petitions, then Classic is not entitled to relief now (Agency Brief at 7). Classic's perceived need for retroactive relief arises from repeated changes to its compliance plan and its "need" is self-imposed. Id. at 7-8.

As the Board has previously stated, there must be exceptional circumstances for it to grant retroactive variance relief. Borden Chemical, Quaker Oats, supra. In Borden Chemical a prospective variance was granted based on an arbitrary or unreasonable hardship but a retroactive one was denied on the basis of delay and presentation of less than optimal environmental effects information. In Quaker Oats, a retroactive variance was requested but was denied because of lethargic attempts at compliance, the filing of a variance petition to avoid enforcement, and the failure to show arbitrary or unreasonable hardship. Clearly these two petitioners did not show exceptional circumstances to warrant retroactive relief.

The Board herein, however, finds an arbitrary or unreasonable hardship. The Board will grant retroactive variance relief only because of the facts of this case, including a change

of ownership, the nature of the coated materials, the constant updating of the amended petitions, and the fact that Classic came into compliance prior to Board decision, which the Board believes constitute exceptional circumstances. The regulation at issue is technology forcing, and compliance is technically difficult without going to great expense or developing new coatings. Variances from such rules have commonly been granted to companies while they await development of coatings that meet the requirements of the rule or while they install control equipment. National Can Corporation v. IEPA, 62 PCB 405 (PCB 84-108, January 24, 1985); American Can Co. v. IEPA, 62 PCB 399 (PCB 84-106, January 24, 1985). The March 14, 1985 petition states that acceptable compliance coatings were not available at the time and that the owners intended to achieve compliance by December 31, 1985 using any available compliance coatings in combination with controls to collect and incinerate VOC emissions. This time frame was reasonable given that equipment would have to be purchased and installed. In this situation, it would not be reasonable to close the non-compliant lines or the plant for nine months until compliance was achieved. The petition would have been much improved if it had contained more economic data and explicit claims of arbitrary or unreasonable hardship.

The Board is also impressed by the good faith efforts of Classic's new owners. They have achieved compliance, although by a means not envisioned in the March 14 petition. The subsequent petitions are viewed as attempts by Classic to keep the Board informed of changes in its compliance effort. These petitions restarted the variance clock and lengthened the proceeding.

The Board sees no benefit to the environment or public in leaving the present owners of Classic open to enforcement and will grant a retroactive variance from March 14 up to and including December 31, 1985.

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

ORDER

Classic Finishing Company, Inc., is hereby granted variance from 35 Ill. Adm. Code 215.204(c) for its facility at 4500 West Division, Chicago, Illinois subject to the following conditions:

1. This variance covers the period between March 14, 1985 and January 1, 1986.
2. Within forty-five (45) days after the date of this Order, Classic Finishing Company, Inc. shall execute and send to:

Mr. Joseph R. Podlewski, Jr.
Illinois Environmental Protection Agency
Enforcement Division
1701 S. First Avenue, Suite 600
Maywood, Il 60153

a certification of 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 during any period which this matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

Classic Finishing Company has received and understands the Order of the Illinois Pollution Control Board in PCB 84-174B dated June 20, 1986 and hereby accepts said Order and agrees to be bound to all of the terms and conditions thereof.

Petitioner

By: Authorized Agent

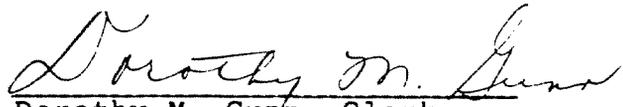
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IT IS SO ORDERED.

J.D. Dumelle concurred.

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 June, 1986, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board