

ILLINOIS POLLUTION CONTROL BOARD
August 31, 1989

AMERICAN NATIONAL CAN COMPANY,)
)
 Petitioner,)
)
 v.) PCB 88-203
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. MARK STEGER, ESQ. APPEARED ON BEHALF OF PETITIONER, AMERICAN NATIONAL CAN COMPANY;

MS. LISA MORENO, ESQ. APPEARED ON BEHALF OF RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE THE BOARD (by M. Nardulli):

This matter comes before the Board on a Petition for Variance Extension filed on behalf of the American National Can Company ("ANC") on December 21, 1988 and amended on January 18, 1989. The petitioner is seeking to extend the variance granted in PCB 87-67 on February 25, 1988 from the emission limitations for can coating manufacturing plants, as set forth in 35 Ill. Adm. Code Section 215.204(b)(6). ANC seeks the variance extension from January 1, 1989 until the Illinois Environmental Protection Agency ("Agency") reaches a final decision on ANC's alternative control strategy or until November 1, 1989, whichever occurs first (R.5).

Hearing was held on this matter on May 12, 1989 in Hoopeston, Vermillion County. No witnesses were called at the hearing and there is no record of any member of the public being present. The petitioner filed post-hearing comments on May 25, 1989. The Agency filed a post-hearing brief on June 12, 1989 and the petitioner filed a reply brief on July 21, 1989. Based on the record, the Board finds that the request for variance should be granted. Immediate compliance with the rule would impose an arbitrary or unreasonable hardship on the petitioner.

BACKGROUND

ANC's facility in Hoopeston is a metal containers manufacturing plant employing approximately 155 people. The metal containers are sealed by use of compounds containing volatile organic matter ("VOM"). VOM emissions are largely generated by the end-sealing. The emission of these VOM compounds are regulated by 35 Ill. Adm. Code Section 215.202 et. seq. VOM emissions occur during the drying process, during the coating and application phases and during conveyance to the packaging area. The VOM emissions are exhausted to the atmosphere through stacks.

On January 24, 1985, the Board granted ANC a variance until December 31, 1987 to reformulate its end-sealing compound to a lower VOM content (PCB 84-106). ANC was unable to comply with the applicable emission limitations by the time of the expiration of the variance and therefore filed for an extension. In PCB 87-67 the Board extended the variance until December 31, 1988. Under the terms of the extension, ANC was to achieve compliance either by utilizing compliant end-sealing compounds or by the installation of VOM control equipment.

ANC determined that compliant end-sealing compounds were not available and pursued plans to install control equipment. ANC anticipated utilizing the provisions of Section 215.207 to attain compliance. However, ANC had added additional end-making capacity which are new emission sources and the Agency advised ANC that compliance with §215.206(b)(6) cannot be demonstrated by utilizing §215.207, because the new emission sources were constructed after July 1, 1979. Alternatively, ANC submitted an alternative control strategy ("ACS") as allowed under 35 Ill. Adm. Code Part 202 to achieve compliance with §215.204(b)(6). The ACS permit application was submitted to the Agency on December 14, 1988 and is presently being reviewed by the Board in PCB 89-68. ANC is seeking a variance until the Board has come to a decision in PCB 89-68 so that the end-sealing operation at the Hoopeston facility can operate in compliance with Board regulations.

PETITIONER'S COMPLIANCE PLAN

The compliance plan calls for the pursuit of an ACS permit from the Agency. In the petition for variance, and a revised compliance plan filed on March 22, 1989, ANC presents its argument for an ACS permit. The annual emission baseline for the end sealing operation at the Hoopeston facility is 227.9 tons, and the daily emission baseline is 1,850 pounds per day. After the VOM control equipment is in place, the actual maximum daily emissions from the controlled end-sealing compound emission sources are 1,220 pounds, thereby establishing a daily offset available for new emission sources, including the gang-end presses, of 630 pounds per day; the daily VOM emissions from the gang-end presses are expected to be 586 pounds per day.

ANC proposes to install VOM control equipment on certain end-sealing compound emission sources at its Hoopeston facility. The emissions from these controlled sources will be 87.1 tons per year. These emissions, in addition to the emissions from the uncontrolled gang-end presses of 73.3 tons per year, will result in annual VOM emissions from the Hoopeston facility of 160.4 tons per year. This figure is 67.5 tons below the annual emission baseline of 227.9 tons which will be reserved for future growth at the Hoopeston facility.

ANC does not expressly discuss alternative plans for compliance. However, the petitioner does state that it has determined that it will not be possible to comply by using low VOM solvents. Further, it is apparent that the petitioner could install additional control equipment on the new end-making equipment to come into compliance but does not feel it is necessary.

HARDSHIP AND ENVIRONMENTAL IMPACT

ANC maintains that the ACS permit will result in lower emissions than would otherwise be required and that the impact of the ACS is environmentally equivalent to that which would otherwise be achieved and maintained under existing regulation. Such environmental equivalence will be achieved by the installation of air pollution control equipment in the form of a thermal incinerator to over-control certain emission sources in order to provide credit for new sources where control is not presently achievable and where low-solvent compliance compounds are not suitable for the majority of ANC's customers. ANC states that the environmental impact of granting this variance extension will be minimal because of the short time frame of the variance request and because VOM emissions from the Hoopeston facility will not significantly affect ambient ozone concentrations in Vermillion and the surrounding counties. Moreover, ANC expects to restart the incinerator during the term of the variance extension, thereby reducing VOM emissions even further.

In its recommendation, the Agency states that Vermillion County is an attainment area for ozone. The Agency also says that the grant of the variance would need to be submitted to the USEPA as a SIP revision.

Contrasting with the issue of environmental impact is the issue of hardship. ANC states that denial of the requested variance extension would impose an arbitrary or unreasonable hardship on ANC. The Agency agrees that denial of the variance extension with respect to the single and double-die end presses and associated control equipment would be arbitrary and unreasonable. However, the Agency recommends denial of ANC's request for variance for its two new gang-presses. The Agency states that there exists a fundamental difference between the Agency and ANC concerning the calculation of baseline emissions for an ACS permit. The Agency denied ANC's ACS permit because it

determined that ANC's values for base line emissions were inaccurate and consequently ANC would not be able to comply with Section 215.204(b)(6) through an ACS. The Agency maintains that the ACS is not acceptable and there is no reason to allow the petitioner time to pursue that strategy. The Agency recommended no conditions to the grant of the variance and did not object to the grant if the variance is retroactive to January 1, 1989.

CONCLUSION

The Board finds that ANC has presented adequate proof that immediate compliance with the regulation would impose an arbitrary or unreasonable hardship. Further, because ANC has installed the control equipment required under the terms of its variance in PCB 87-67 and because of the short time frame of the variance, the environmental impact of extending the variance is expected to be minimal. The Agency's recommendation to deny the variance with respect to the two gang presses is not accepted by the Board because the Board is of the opinion that it prejudices the final decision on the ACS that is due in PCB 89-68. Further, denial of the extension of variance for the gang presses would act as a partial denial of variance for the remainder of the plant by limiting plant utilization. The Board views this as an arbitrary or unreasonable hardship.

The final issue to be addressed is whether the variance extension should be granted retroactive from January 1, 1989. The Board is inclined not to grant retroactive relief, absent a showing of unavoidable circumstances, because the failure to request relief in a timely manner is a self-imposed hardship. However, in this situation, there appears to be evidence of unavoidable circumstances. The petitioner was diligently working to achieve compliance through the installation of control equipment and utilization of the provisions of Section 215.207. It appears that the petitioner was on schedule to come into compliance by the end of its variance and had no reason to anticipate the need for an extension. When ANC realized that Section 215.207 could not be utilized and that an ACS permit would be required, it was too late to make a timely request for variance extension. Based on these circumstances, the Board will grant the variance retroactively.

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

ORDER

Petitioner is hereby granted an extension of the variance in PCB 89-67 from 35 Ill. Adm. Code Section 215.204(b)(6), subject to the following conditions:

1. This variance shall be effective from January 1, 1989 until November 1, 1989 or, until an Opinion and Order is issued in PCB 89-68, whichever occurs first.

2. Emissions of the VOMs from Petitioner's Hoopston facility shall remain less than 250 tons/year.
3. During the period of variance, the alternative emission limitation applicable to ANC's end-sealing compounds shall be 4.4 pounds of volatile organic material per gallon, minus water computed from a running total of 12 months of data.
4. The plans and reports specified to be submitted to the Agency under this variance shall be sent to the following address:

Illinois Environmental Protection Agency
Division of Air Pollution Control
1340 North 9th Street
Springfield, Illinois, 62706.
5. Within forty five (45) days after the date of this Order the Petitioner shall execute and send to:

Ms. Bobella Glatz
Enforcement Attorney
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 9276
Springfield, Illinois 62794-9276

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

This variance shall be void if Petitioner fails to execute and forward the certificate within the forty-five (45) day period. The forty-five 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

I, (We), National Can Corporation, having read the Order of the Illinois Pollution Control Board, in PCB 88-203, dated August 31, 1989, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Title

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 31st day of August, 1989 by a vote of 6-0.

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