

ILLINOIS POLLUTION CONTROL BOARD
November 26 , 1975

CONTINENTAL CAN COMPANY, INC.,)
 Metals Division,)
 Petitioner,)
)
 v.) PCB 75-199
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

Mr. Harvey M. Sheldon, Plunkett, Nisen, Elliott & Meier,
appeared on behalf of the Petitioner;
Mr. Peter E. Orlinsky, appeared on behalf of the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the petition of Continental Can Company, Inc. (Can) for variance from Rule 205(f) of the Air Regulations until January 1, 1976. Can seeks this variance for its manufacturing plant, Continental Can Company Plant No. 64 (North Grand Plant), which is located at 1657 North Kilpatrick, Chicago, Cook County, Illinois. An additional information order was issued on May 15, 1975. The Environmental Protection Agency (Agency) filed its Recommendation August 28, 1975. On October 17, 1975, a hearing was held at which a "Stipulation for an Agreed Order" was submitted to the Board.

The North Grand Plant has nine coat lines and eight litho press lines for the manufacture of cans which are the subject of this petition. These lines manufacture some 245 million cans per year ranging from very small to 2.5 gallons in size. The cans are intended for use in containing paint, household and industrial products. Petitioner consumes 46,000 gallons of enamel, 37,000 gallons of coatings, and 21,000 gallons of varnishes. The foregoing include organic materials and chemical compounds, e.g., acrylics, alkyds, vinyls, phenolics and epoxys. Depending upon the end use and contents, each can requires one or more coating, varnish or enamel, inside and out.

Petitioner's Agency-issued operating permit expired on August 31, 1975. Included in the permit was a Project Completion schedule whereby Petitioner would reduce its use of organic material in its processes to 20 per cent or less total volume by May 30, 1975 [Rule 205(f)(2)(D)].

Can had been assured by its suppliers that reformulation of materials was possible and that said reformulated materials would be available by mid-1975 so as to allow Petitioner to reduce its consumption of organic material and achieve compliance via Rule 205(f)(2)(D) of the Air Regulations. It became apparent to Can that in spite of its intensive research and testing efforts, reformulated coatings would not be available. Without these reformulated coatings, Petitioner's emissions of photochemically reactive organic materials exceed the eight pounds per hour standard of Rule 205(f) of the Air Regulations. The extent of violation varies daily as non-photochemically reactive materials are phased in on an as-available basis.

Recognizing that compliance through reduction was not possible by May 30, 1975, Can took the initiative and installed an 8,000 CFM catalytic fume incinerator unit and heat exchanger to control emissions on three coater lines. Petitioner will achieve compliance by January, 1976, for its remaining coater lines and eight litho press lines by converting to exempt materials. Petitioner will have reduced its total emissions of photochemically reactive materials by 95% of 1970 levels by November 15, 1975.

The Board finds that Petitioner has acted in good faith and that the actions taken by it toward compliance are laudable. The Board recognizes that exempt materials are in short supply and that to deny this variance would cause Petitioner unreasonable hardship. Indeed, the Board would ordinarily grant Petitioner's variance based upon the facts presented to it. However, Petitioner's stipulation is deficient.

On July 17, 1975, the Board issued an Opinion in this matter stating:

Can's amended petition included an allegation that Can's emissions would "not materially interfere with the attainment or maintenance of national or state ambient air quality standards." We hold that Can's variance petition states a prima facie cause of action entitling it to a hearing. However, we caution Petitioner that, in said hearing, it will have the burden of proof in substantiating its allegation by a preponderance of the evidence.

Petitioner stipulates that it has not "significantly contributed to deterioration of air quality by reason of the operations subject to a variance" (Stip. 7). The Board finds that this statement does not meet Can's burden of proof under Train v. NRDC 43 USLW 4467. Such matters involve the health and general welfare of the citizens of the State. We cannot accept a stipulation to the effect that these

emissions do not contribute to violations of ambient air quality standards. The Board must have a data base on which such a stipulation is made. Therefore, the Board must reluctantly deny Can's petition in this matter.

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

Mr. Young will submit a Concurring Opinion.

ORDER

It is the Order of the Pollution Control Board that Continental Can Company, Inc.'s petition for variance from Rule 205(f) for its North Grand Plant be and is, hereby, dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26th day of November, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board