

ILLINOIS POLLUTION CONTROL BOARD
September 8, 1988

DEERE & COMPANY, JOHN DEERE)
HARVESTER EAST MOLINE WORKS,)
)
Petitioner,)
)
v.) PCB 88-22
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MS. ELIZABETH O. SHAW APPEARED ON BEHALF OF PETITIONER;

MR. JAMES J. O'DONNELL APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board on a Petition for Variance filed on January 21, 1988 by Deere & Company, John Deere Harvester East Moline Works ("Deere"). Deere requests variance for a period of six months from the December 31, 1987 compliance date specified in 35 Ill. Adm. Code 215.211(b) with respect to meeting the limitations for emissions of volatile organic material ("VOM") found at 35 Ill. Adm. Code 215.204(j)(3).

Hearing was originally scheduled for March 21, 1988. However, hearing was continued to May 17, 1988 pursuant to a Motion for Continuance filed by Deere. The Agency filed its Recommendation ("Rec") to grant the requested relief on April 20, 1988.

Based on the record before it, the Board finds that Deere would suffer an arbitrary or unreasonable hardship not justified by the environmental impact if denied the requested variance. Accordingly, the Board will grant the variance, subject to conditions.

BACKGROUND

Deere operates a facility for the manufacture of combines and related agricultural equipment located on a 246-acre site in East Moline, Illinois; the facility employs approximately 2,500 persons. Deere generates VOM emissions from its painting operations and vents the emissions to the atmosphere. These emissions are subject to limitations as specified in the Board's rules and regulations.

Deere has been engaged in a ten-year, \$10 million effort to develop a coating process capable of meeting VOM emission limitations and suitable for painting products of heavy metal thickness (Petition at 4). This effort culminated in the development of two electrodeposition surface coating ("E-Coat") systems. Deere obtained construction permits for installation of the E-Coat systems in August and September 1986 (Petition, Appendix B) and was issued an operating permit on April 28, 1987 (Id.).

However, after several months of operating of the new E-Coat systems, it became apparent to Deere that "de-bugging" of the E-Coat system was proving to be more complicated than anticipated, and that there was uncertainty as to whether the system would be functioning in a manner sufficient to meet the pending December 31, 1987 compliance deadline. Accordingly, Deere filed the instant petition requesting that the December 31, 1987 deadline be moved out six months to allow it the additional time needed for tuning its E-Coat systems.

COMPLIANCE PROGRAM

Deere's efforts to achieve compliance with VOM limitations have already achieved a substantial reduction in VOM emissions, estimated to be a reduction of about 754 tons/year (55% reduction) over pre-RACT emissions (Petition at 4). Additionally, the decrease would have been more than twice as large had Deere been able to maintain earlier product production levels (Id.).

Deere estimates that an additional reduction of a maximum of 12.6 tons per six-months is necessary to assure compliance (Petition at 4). Deere believes that this reduction can be achieved through continued internal system adjustments, and that such adjustments can be implemented within the term of the requested variance (R. at 15, 30).

The adjustments which Deere has or is undertaking include reduction in spray time (R. at 23-4), increase in coating load density (R. at 24-5), reduction in the primary solvent (R. at 25-6, 29), adjustment and replacement of spray nozzles (R. at 26, 28), modification of flow rates (R. at 26), modification of the exhaust system (R. at 27), covering of coating tanks during periods of non-operation (R. at 28), reduction of purging of permeate (R. at 29), and reformulation of some coatings (R. at 29).

ENVIRONMENTAL IMPACT

Deere contends that the additional emissions during the pendency of the requested variance, a maximum of 12.6 tons, would produce a de minimus environmental impact (Petition at 4). Deere further notes that Rock Island County, in which its facility is located, is an attainment county for ozone pursuant to 40 CFR 81.314, and contends that the excess emissions would have no adverse impact on air quality in Rock Island County or in any nonattainment county in Illinois or neighboring states (Id.).

The Agency agrees that, given the emissions from the Deere facility and the location of the facility, air quality in the area would not deteriorate as a result of grant of the variance. The Agency also notes:

The emissions released from the painting processes at the [Deere] facility are considered not toxic in concentrations in which they are released. While the materials released from the painting operations have a slight solvent odor, detectable around the facility, no citizens' complaints for painting odors are on record against the facility. Therefore, there appears to be no unreasonable interference with the health or well-being of residents in the area. Rec. at par. 4.

The Agency further notes that Deere may be in compliance well before the end of the variance period, and believes that, due to the small amount of excess emissions produced during the short variance period, "there is very little injury that could result from grant of this variance" (Rec. at par. 4).

HARDSHIP

Deere submits that failure to grant this variance would constitute an arbitrary or unreasonable hardship. Deere contends that denial simply because de-bugging problems have proven more difficult than anticipated would penalize Deere for its extra efforts to develop and utilize the best available technology.

The Agency also submits that denial would constitute an arbitrary or unreasonable hardship. The Agency contends that Deere has made a good faith effort to de-bug the complex E-Coat systems, and points out that the Deere has notified the Agency and the Board promptly upon encountering difficulties (Rec. at par. 2-2). The Agency concludes:

In view of the fact that petitioner is nearing compliance at this time and may be in compliance before the variance period, petitioner's history of

cooperation in regard to air pollution problems, the minimal impact of excess VOCs during the variance period, and the complexity of the new technology E-Coat systems, the Agency agrees that failure to grant the requested variance would impose an arbitrary and unreasonable hardship on the company. Rec. at par. 2-3.

RETROACTIVITY

The Board notes that the variance herein requested is retroactive in its entirety. A variance is not retroactive as a matter of law (IEPA v. Citizens Utilities Company of Illinois, PCB 79-142, 56 PCB 04), and the Board does not grant variances retroactively unless the retroactive relief is specially justified (Quaker Oats Company v. IEPA, PCB 83-107, 59 PCB 27; Hansen-Sterling Drum Co., v. IEPA, PCB 83-240, 62 PCB 389; City of Farmington, v. IEPA, PCB 84-166, 63 PCB 98; Fedders-USA v. IEPA, PCB 83-47, 63 PCB 461; Borden Chemical Company v. IEPA, PCB 82-82, 67 PCB 04).

A principal consideration in the granting of retroactive relief is a showing that the petitioner has diligently sought relief and has made good faith efforts at achieving compliance (Midwest Solvents Company of Illinois v. IEPA, PCB 84-5, 57 PCB 370; Kable Printing Company v. IEPA, PCB 85-57, 67 PCB 420; Classic Finishing Company, Inc. v. IEPA, PCB 84-174(B), 70 PCB 233; Bloomington/Normal Sanitary District v. IEPA, PCB 87-207, March 10, 1988, slip op. at 2). The Board believes that the record demonstrates that Deere has diligently sought relief and has made good faith efforts to comply, as is in fact demonstrated by apparent attainment of compliance during the pendency of the Petition. The Board therefore believes that Deere has made a showing sufficient for grant of retroactive variance.

CONCLUSION

Based on the record before it, the Board finds that, absent the requested relief, Deere would incur an arbitrary or unreasonable hardship not justified by the environmental impact. For these reasons the Board will grant the requested relief, subject to conditions.

ORDER

Petitioner is hereby granted variance from 35 Ill. Adm. Code 215.204(j)(3) for its John Deere Harvester East Moline Works, subject to the following conditions:

1. Variance shall begin on January 1, 1988 and terminate on June 30, 1988.
2. No later than forty-five days from the date of this Order Petitioner shall submit a report to the Agency, informing the Agency on progress attained in Petitioner's effort to complete the compliance program. This report shall be addressed to: Mr. Richard Jennings, Regional Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency, 5425 North University, Peoria, Illinois 61614.
3. Within 45 days of the date of this Order, Petitioner shall execute and forward to Ms. Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 88-22, September 8, 1988.

Petitioner

Authorized Agent

Title

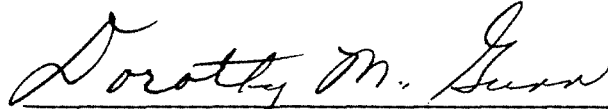
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 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.

Board Member Jacob 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 8th day of September, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board