

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1987

EKCO GLACO CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 87-41
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MESSRS JEFFREY FORT AND JAMES DE NAPOLI OF MARTIN, CRAIG,
CHESTER AND SONNENSCHNEIN APPEARED ON BEHALF OF PETITIONER;

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

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on an April 1, 1987
Petition To Extend Air Variance filed by Petitioner, Ekco Glaco
Corporation ("Ekco Glaco"), requesting to extend and modify this
Board's earlier variance (granted in Ekco Glaco Corp. v. IEPA,
PCB 86-91, January 8, 1987, hereinafter "Ekco Glaco I") as
follows: Petitioner seeks a variance extension for its used pan
reconditioning line until April 1, 1988; and extension for its
new pan manufacturing line until November 1, 1987.

The Board found in an April 16, 1987, Order that Ekco
Glaco's April 1, 1987, petition to extend variance was deficient
in that it inadequately addressed a detailed compliance plan and
the requirements of federal law. On June 1, 1987, Ekco Glaco
filed an amended petition. On July 6, 1987, the Illinois
Environmental Protection Agency ("Agency") filed a recommendation
that variance be denied. On July 10, 1987, Ekco Glaco filed a
response to the recommendation. On August 7, 1987, hearing was
held. Ekco Glaco filed briefs on September 4, 1987, and
September 18, 1987. The Agency filed briefs on September 8,
1987, and September 21, 1987.

Ekco Glaco seeks a variance from Manufacturing Plant
Emission Limitations set forth at 35 Ill. Adm. Code Sections
215.204 and 215.205. On June 27, 1985 this Board granted Ekco
Glaco's predecessor's request for variance [from 35 Ill. Adm.
Code Sections 215.204 and 215.205] until January 1, 1986 (Glaco
Corp. v. IEPA, PCB 85-29, June 27, 1985, hereinafter "Glaco").
This order was subsequently modified until February 15, 1986.
Now Ekco Glaco once again seeks variance from the same
regulations until November 1, 1987 and April 1, 1988 for its new
and used pan lines.

Ekco Glaco is in the business of manufacturing and reconditioning commercial bakery pans at its plant located in Chicago, Illinois where approximately 350 persons are employed. Ekco Glaco's facility manufactures approximately 1,200,000 new pans and reconditions 440,000 used pans, annually. Only seventy-five percent of new pans are coated at the Chicago facility. The coating process [the same for both new and used pans] consists of twenty percent silicone resin and eighty percent solvent. The solvent is composed of naphtha, toluene, propylene glycol, methyl ether and isobutyl isobutyrate. Subsequently, a reconstituting solvent is added to the resin coating during the new pan coating process. This reconstituting solvent is composed of VOM naphtha, toluene and monoethers.

The new pan operation services the entire country and overseas, but the used pan reconditioning line services approximately 35 bakeries within a 150 mile geographic area. Ekco Glaco's used pan reconditioning operations, the only such facility in the area, involves removal of heavy carbon and grease build-up and subsequent application of the silicone coating. The coating facilitates easy release of bakery products from the baking pans. This reconditioning process can be completed in as little as 24 hours. (R. 133). Sales associated with the used pan reconditioning line were \$714,000 for 1986. (R. 138).

The solvents used in Ekco Glaco's operations contain volatile organic material (VOMs). During new pan operations the VOM emissions are generated by the coating sprayers. These emissions are drawn off by a duct fan, filtered and vented through a stack to the atmosphere. During used pan reconditioning, VOM emissions are generated during the spraying process and during preheated, curing oven operations. These emissions are also vented to the atmosphere.

Ekco Glaco's VOM emissions are regulated by Section 215.204(j)(1):

**Section 215.204 Emission Limitations for
 Manufacturing Plants**

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:

j)	Miscellaneous Metal Parts and Products Coatings	<u>kg/l</u>	<u>(lb/gal)</u>
1)	Clear coating	0.52	(4.3)

Pursuant to 35 Ill. Adm. Code 215.211(a)(1), compliance with the above limitation was required by December 31, 1983. Also, pursuant to 35 Ill. Adm. Code 215.122(a), a "Compliance Plan" was

required to have been submitted to the Agency, not later than August 19, 1983.

Section 215.205 offers, as an alternative to complying with Section 215.204, the control of VOM emissions by either:

1. Use of an afterburner system, provided that 75 percent of the emissions from the coating line and 90 percent of the nonmethane volatile organic material which enters the afterburner are oxidized to carbon dioxide and water; or,
2. A system demonstrated to have a control efficiency equivalent to or greater than that provided under Section 215.204.

Use of the Section 215.205 alternative compliance program does not alter the August 19, 1983, "Compliance Plan" submission deadline, nor the December 31, 1983, compliance deadline.

The question presented to the Board, as we end calendar year 1987, is whether "immediate" compliance with these 1983 regulations constitutes an arbitrary and unreasonable hardship when balanced against the environmental impact, and whether Ekco Glaco has a detailed plan to come into compliance. As discussed below, the Board does not believe Ekco Glaco has carried its burden and variance will be denied.

The thrust of petitioner's argument on hardship is that Ekco Glaco has exercised due diligence in attempts to comply but that unforeseen problems have delayed compliance:

Ekco [Glaco] has in the past and continues to act diligently and in good faith in an attempt to achieve compliance. However, several unforeseen problems have prevented Ekco Glaco from achieving its compliance goals. Ekco [Glaco] has demonstrated to this Board that Ekco [Glaco] is intent on achieving compliance with the Board air regulations and that Ekco's [Glaco] past efforts to achieve compliance justify the extension of prior variances granted in PCB 85-29 and 86-91. Ekco [Glaco] will continue its efforts to achieve compliance with Sections 215.204(j)(1) and 215.205, while Ekco [Glaco] submits that it will suffer an arbitrary and unreasonable hardship if its request to extend its variance is denied. (Pet., p. 11)

To support its position Ekco Glaco has presented factual information on its efforts and problems in obtaining compliance.

The Agency asserts that any hardship which exists is self-imposed. The Agency asserts that Ekco Glaco's present difficulties result not from difficulties in compliance with the emission limits, but a consequence of prior business decisions (Agency Brief, 9/8/87, p. 11). The Board believes this distinction is critical to the issue of "hardship".

The facility in question was first informed that it would be required to comply with the relevant VOM limits by Agency letter of March 21, 1983. (Glaco, PCB 85-29, Agency Recommendation, p. 3). Since the original notification, the facility has changed from Ekco Products, Inc., to Glaco Corporation, to Ekco Glaco Corporation. Since the original notification, the facility has argued that the rule does not apply to their operations, agreed that the rule does apply, chosen consultants, prepared reports, hired contractors, purchased equipment, changed consultants, evaluated alternatives, chosen to take the old pan line out of operation, chosen to leave the old pan line in operation. In summary, the facility has, since March 21, 1983, made a series of business decisions on how to proceed towards compliance. When those decisions did not achieve compliance, the facility has come to this Board for additional time. As we approach the fifth anniversary of the original notification, Ekco Glaco is seeking additional time to further evaluate alternatives and implement compliance. The Board believes that Ekco Glaco's present problems do not arise from the difficulties posed by "immediate compliance". Ekco Glaco's problems arise from the delay caused by decisions it has made in attempting to secure compliance and its failure to commit to a particular compliance option. The Board cannot find that those problems constitute an arbitrary or unreasonable hardship, especially when the potential for environmental harm and lack of a firm compliance plan are considered.

Over Ekco Glaco's objection, the Agency moved and the Hearing Officer admitted results of 1987 air quality monitoring for ozone in Illinois (R. 149-160, Resp. Ex. Nos. 1 & 2). The Board finds that admission proper, over a hearsay objection, as "evidence which is material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs". 35 Ill. Adm. Code 103.204(a), and as business records. 35 Ill. Adm. Code 103.208. The Board notes that the same information has been accepted by the Board in several regulatory proceedings. This evidence is accepted for the sole purpose of showing that during 1987 the ambient air quality standard for ozone has been violated frequently, pervasively, and substantially in Northeastern Illinois.

Ekco Glaco submits that its VOM emissions will not cause a significant adverse impact on air quality. This argument misses the point. The number of hydrocarbon sources in northern Illinois that contribute to the ozone problem is large. That number includes every type of hydrocarbon source from the automobile to Ekco Glaco. It would be impossible to conclude

that any one source "causes a significant adverse impact." Yet the ambient air quality standards are violated. The Board finds that Ekco Glaco is a source of hydrocarbons which, to an unquantified degree, contributes to frequent, pervasive and substantial violations of ambient air quality standards for ozone in Northern Illinois.

Additionally, the Board finds that Ekco Glaco, even at this late date, lacks a firm compliance plan. Ekco Glaco's compliance plan for the new plan line is to cure the existing problems with the used afterburner, yet the manufacturer (R. 55) and the current consultant (R. 61) disagree on what the problem might be. If the problem is not solved, Ekco Glaco has no alternative plan.

The compliance plan for the used pan line is even more uncertain. It will either be brought into compliance by use of emission offsets (Ekco Glaco Brief, 9/4/87, p. 18), or by relocating the used pan line to a separate facility in the Chicago area (Ekco Glaco Brief, 9/4/87, p. 17) or by the use of additional add-on controls (R. 81). Ekco Glaco cannot provide a schedule by which these actions will be implemented (R. 109).

In addition to all of the above compliance plans, Ekco Glaco continues to pursue development of a compliant coating (R. 76-77) which would eliminate the need for add-on controls. In addition, Ekco Glaco is considering seeking site-specific regulatory relief (Pet. Ex. 11, p. 1)*. In summary, Ekco Glaco is still unwilling to commit to a compliance plan.

The Board concludes these facts demonstrate a lack of commitment to follow through. This conclusion is bolstered by Ekco Glaco's actions relating to their afterburner. Ekco Glaco has had an installed and operational afterburner since late 1986 (R. 117). While that afterburner does not meet the required 90% capture and destruction efficiency, it does meet 68.4% (R. 33). As of August 7, 1987, Ekco Glaco had never run the afterburner on an ongoing basis for pollution control, but only a few times for tests (R. 118). In effect, Ekco Glaco let a perfectly functional afterburner (which would have substantially reduced hydrocarbon emissions during a summer of significant ozone violation) sit idle, simply because it did not lead to full and total compliance with the law.

In 1983, the facility's emissions were approximately 60 tons/year of hydrocarbons, and none of the emissions were controlled (Glaco, p. 2). Today, four years after compliance was

* The intention to file a future site-specific regulatory proposal is not an acceptable compliance plan (City of Mendota v. PCB, No. 3-86-0549, Third District, Slip Op. 10/1/87 and Schrock, PCB 86-205 (1987)).

required, the emissions are 77.5 tons/year (Pet., par. 14), and existing pollution control equipment is simply not turned on.

In summary, the Board finds that Ekco Glaco has not been diligently pursuing compliance or reductions in emissions of hydrocarbons. The Board finds that any hardship in complying with the 1983 regulations is largely self-imposed, in that it results from prior business decisions. The Board also finds that any hardship which arguably may exist is not arbitrary or unreasonable when viewed against four years of delay and Ekco Glaco's contribution to frequent, pervasive and severe violations of the ambient air quality standards for ozone in Northern Illinois. Consequently, the Board will deny Ekco Glaco's request for variance.

Because the Board has denied Ekco Glaco's request for variance on the merits, it need not address the federal law question. The Agency asserts that Section 172 of the Clean Air Act (42 U.S.C. 7401, et seq.) and Section 35 of the Environmental Protection Act preclude granting RACT variances beyond December 31, 1987. Ekco Glaco argues forcefully that the law does allow such variances. An incorrect decision on that question may lead to significant adverse economic consequences for the State of Illinois under the sanction provisions of the Clean Air Act. The Board specifically does not reach that difficult question today.

This Opinion constitutes the Board's finding of fact and conclusion of law in this matter.

ORDER


Ekco Glaco Corporation's April 1, 1987, Petition for Variance from 35 Ill. Adm. Code 215.204 and 215.205(j) is denied.

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

Chairman J.D. Dumelle and Board Member J. Theodore Meyer dissented and Board Member R. Flemal concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of December, 1987, by a vote of 4-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board