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HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

In the Matter of the Application of)
)
INTERNATIONAL PAINT (INTERLUX) No. 3431
DIVISION))
) ORDER GRANTING VARIANCE
For a Product Variance from Regulation 8,)
Rule 43, Section 321)
_____)

The above-entitled matter is an Application for a Product Variance from the provisions of Regulation 8, Rule 43, Section 321. An Application for a Class Action Variance was filed on June 9, 2003. The Applicant amended its request on August 27, 2003, to request a Product Variance.

Cary Nicely of Akzo Nobel appeared for International Paint (Interlux Division) (Applicant).

Toby Sherwood, Counsel, appeared for the Air Pollution Control Officer (APCO).

The Clerk of the Hearing Board provided notice of this hearing on the Application for Product Variance in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for Product Variance on October 30, 2003. The Applicant requested a Product Variance for the period June 1, 2003 through June 1, 2005.

The Hearing Board provided the public opportunity to testify at the hearing as required by

ARB

1 the California Health and Safety Code, but no one did so. The Hearing Board heard the
2 Applicant's and APCO's evidence and argument. The APCO did not oppose the granting of this
3 Product Variance for one year with certain conditions.

4 The Hearing Board received evidence and argument, and took the matter under submission
5 for decision. After consideration of the evidence, the Hearing Board voted to grant the request for
6 Product Variance, as set forth in more detail below.

7 8 BACKGROUND

9 Applicant manufactures, sells and distributes a product known as Interlux Fiberglass
10 Solvent Y202, which is used by boat yards and new boat dealership facilities within the Bay Area
11 Air Quality Management District (District). The product is used to remove mold release
12 compounds from unpainted fiberglass surfaces and gel-coated boat hulls. Applicant's product is
13 subject to District Regulation 8, Rule 43, Section 321 which states no person shall use a surface
14 preparation solvent with a volatile organic compound (VOC) content that exceeds 50 grams per
15 liter.

16 Applicant is not considered a small business as described by California Health and Safety
17 Code Section 42352.5(b)(2).

18 19 DISCUSSION

20 Applicant testified that there is a lack of compliant materials to perform wipe down
21 procedures necessary to achieve coating adhesion to fiberglass and gel-coated surfaces. The
22 cleaning or wipe down operation is necessary to remove contamination, such as mold, and release
23 agents which would result in detachment of coatings in the future when exposed to water. There
24 are no known alternatives to replace this procedure and product. The results of not using this
25 product and procedure would mean the loss of a coating system and the vessels would then need to
26 be repainted and this would generate greater emissions from the unnecessary repainting to cure the

1 coating loss.

2 Applicant is testing a low VOC alternative product, but requires additional time for testing
3 before the lab will release the product to be sold. The product being tested has a VOC level of
4 100 grams/liter, which is still in excess of the limit allowed by the Regulation. Applicant testified
5 that even though testing is being done, there is no guarantee any new product could meet the VOC
6 limits of the District Regulation.

7 District staff estimated that excess emissions during the period requested for the product
8 variance are approximately 5 pounds of VOC per day.

9
10 SPECIFIC FINDINGS

11 The Hearing Board finds pursuant to Health and Safety Code Section 42368 that:

12 1. The manufacture, distribution, offering for sale, application, and use of Applicant's
13 product, Interlux Fiberglass Solvent Y202, is a violation of Regulation 8, Rule 43, Section 321
14 because the product contains 800 grams of VOC per liter which exceeds the VOC limit of 50
15 grams/liter. At this time, Applicant cannot provide a complying product.

16 2. If the end users, such as boat yards and dealers, were required to comply immediately,
17 an unreasonable financial burden would be imposed on them and their business could be
18 eliminated or subject to legal action. Therefore, due to conditions beyond the reasonable control
19 of the users of the product, requiring compliance with District Regulation 8, Rule 43, Section 321
20 would result in an arbitrary and unreasonable taking of property.

21 3. The hardship due to requiring immediate compliance with District Regulation 8, Rule
22 43, Section 321 would be without a corresponding benefit in reducing air contaminants. The
23 emissions produced by the use of the product are minimal.

24 4. Applicant has exercised due diligence in attempting to locate, research, and develop a
25 product that is in compliance with the District Regulation 8, Rule 43, Section 321. Applicant has
26 been conducting trials on various systems and alternative materials to develop a lower emission

1 system for replacement of the existing solvent wash.

2 5. Applicant will quantify the emission levels based on the total sales of Fiberglass Solvent
3 Y202 in the nine Bay Area counties during the variance period.

4
5 THEREFORE, THE HEARING BOARD ORDERS:

6 A. A Product Variance from Regulation 8, Rule 43, Section 321 be and is hereby granted
7 from June 9, 2003 to and including June 8, 2004 subject to the following conditions:

8 1. During the variance period, Applicant shall maintain records of all sales of Fiberglass
9 Solvent Y202 within the District. These records shall be submitted to the Hearing Board and
10 Compliance and Enforcement Division, pursuant to the following schedule: a report no later than
11 January 2, 2004, a report no later than April 1, 2004, and a report no later than July 1, 2004.

12 2. Beginning November 9, 2003, a written notice shall accompany any Interlux Fiberglass
13 Solvent Y202 sold by International Paint within the District stating (A) that the product is being
14 sold pursuant to a product variance granted by the District Hearing Board for the period June 9,
15 2003 through June 8, 2004, and (B) that the product may be used only for removing mold release
16 compounds from unpainted fiberglass surfaces and gel-coated boat hulls.

17 3. No later than April 1, 2004, Applicant shall report to the Hearing Board and the
18 Compliance and Enforcement Division its efforts to develop a complying product.

19 4. No later than June 1, 2004, Applicant shall report to the Hearing Board its efforts to
20 develop a complying product.

21 B. All reports to the Hearing Board shall be in writing, in an original and eight copies, and
22 shall be addressed to: Ms. Mary Romaidis, Clerk, Hearing Board, Bay Area Air Quality
23 Management District, 939 Ellis Street, San Francisco, California 94109. Reports to other offices
24 or individuals at the Bay Area Air Quality Management District are not reports to the Hearing
25 Board.

26 C. The Air Pollution Control Officer shall advise the Hearing Board in writing, in an

1 original and eight copies, of any violation of this Order.

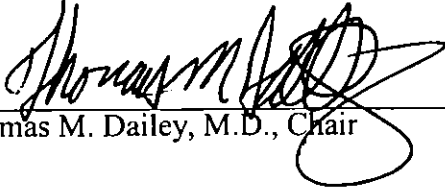
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Moved by: Christian Colline, P.E.

Seconded by: Allan R. Saxe, Esq.

AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq., Thomas M. Dailey, M.D.

NOES: Terry A. Trumbull, Esq.



Thomas M. Dailey, M.D., Chair

11-13-03

Date