

FILED

AUG - 9 2004

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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

MARY ROMAIDIS
CLERK

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

In The Matter Of The Application of)
)
)
INTERNATIONAL PAINT, INC. (INTERLUX)
DIVISION))
)
For an Extension of Product Variance from)
Regulation 8, Rule 43, Section 321)
)

DOCKET NO. 3431

**ORDER GRANTING EXTENSION OF
PRODUCT VARIANCE**

The above-entitled matter is an application for Extension of a Product Variance from the provisions of Regulation 8, Rule 43, Section 321. The Applicant was granted a Product Variance on November 13, 2003 (herein, "2003 Product Variance"). The 2003 Product Variance covered the period from June 9, 2003 until June 8, 2004. Applicant, International Paint, Inc. (Interlux Division), ("Interlux") requested an extension of this variance, representing that, despite its diligent efforts, it had not been able to identify a product substitute compliant with District regulations. A hearing on this matter was held on July 8, 2004.

Stan Sussman appeared for Interlux ("Applicant").

Adan Schwartz appeared for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of this hearing in accordance with the requirements of the California Health and Safety Code. By a letter dated June 2, 2004, Applicant requested that the 2003 Product Variance be extended by at least nine months.

The Hearing Board provided the public opportunity to testify at the hearing as required by the California Health and Safety Code, but no one did so. The Hearing Board heard

ALB

1 Applicant's and APCO's evidence and argument. The APCO did not oppose the granting of
2 this Product Variance extension provided certain conditions were attached.

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

7 BACKGROUND

8 The Background factual information noted in the November 13, 2003 Order Granting
9 Product Variance is hereby incorporated by reference. Based on testimony offered at the
10 July 8, 2004 hearing, it appears that Interlux has exercised due diligence during the term of the
11 Product Variance to locate, research, or develop a product that is both functional for Applicant's
12 business purposes and compliant with District Regulation 8, Rule 43, Section 321.
13

14 DISCUSSION

15 As a preliminary matter, the Hearing Board approaches this request for Extension of a
16 Product Variance as if it were an application for a new variance in that the findings required
17 under Health and Safety Code § 42368(a) must be renewed. In addition, because the requested
18 extension would entail that the duration of the Product Variance exceeds one year, a finding of
19 "good cause" must be made pursuant to Health and Safety Code Section 42372(c).

20 The Discussion set forth in the November 13, 2003, Order Granting Product Variance
21 remains relevant, and is hereby incorporated by reference. At the July 8, 2004 hearing, Interlux
22 testified that, despite considerable effort and expense, it has been unable to locate or develop
23 an alternative solvent compliant with District regulations. Interlux also testified that it was
24 turning its efforts from focusing on low-VOC solvents to the use of products that polish or
25 refine the relevant surfaces. Though additional research and field-testing would be necessary,
26 Interlux's testimony suggests there is a reasonable probability that such an approach would
27 succeed.
28

1 SPECIFIC FINDINGS

2 The Hearing Board finds that:

3 1. The findings set forth in the November 13, 2003 Order Granting Product
4 Variance continue to be valid and are hereby incorporated by reference. Regarding the fourth
5 required finding, that Interlux has exercised due diligence in attempting to locate, research,
6 and develop a compliant product, the Hearing Board finds that this criterion continued to be
7 met during the first year of the Product Variance. The Hearing Board therefore reaffirms these
8 findings.
9

10 2. The Hearing Board finds that good cause exists to allow the Product Variance to
11 extend beyond one year. Although initial product development efforts have not been successful,
12 there is a reasonable probability that an alternative compliant product can be developed. If
13 Interlux is successful in its efforts to find an alternative compliant product, the result may yield
14 industry-wide emission reduction benefits. The relatively minor quantity of excess emissions
15 that will be associated with the extension of this Product Variance combined with the prospect
16 of useful product innovation constitutes good cause for the extension.
17

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19 THEREFORE, THE HEARING BOARD ORDERS:

20 A. The November 13, 2003 Product Variance from Regulation 8, Rule 43, Section 321
21 is hereby extended from June 9, 2004 through and including June 1, 2005, subject to the
22 following conditions:
23

24 1. During the extension of the variance period, Interlux shall maintain records of all
25 sales of Fiberglass Solvent Y202 sold within the District's jurisdiction. Interlux shall submit
26 quarterly reports to the Hearing Board and the Compliance and Enforcement Division, pursuant
27 to the following schedule: a report no later than September 8, 2004, a report no later than
28 December 8, 2004, a report no later than March 8, 2005, and a report no later than June 8, 2005.

1 Each report shall state the quantity of Y202 sold since the preceding reporting period, and shall
2 also describe the status of Interlux's compliant product development efforts, including the most
3 recent laboratory or field-testing results.

4 2. Interlux shall reimburse the District for the costs of publishing notice as required by
5 Health & Safety Code Section 42368(c).

6 3. Within 10 days from the effective date of this extension, Interlux must provide a
7 written notice to any retailer, distributor, and purchaser of the Interlux Fiberglass Solvent Y202
8 that is located within the district. The written notice shall be attached to, or otherwise
9 accompany, any shipment of Interlux Fiberglass Solvent Y202, and shall inform the purchaser
10 of the following:

11 a. That Interlux Fiberglass Solvent Y202 is being sold pursuant to an Extension of the
12 Product Variance granted by the District Hearing Board for the period June 9, 2004 through
13 and including June 1, 2005.

14 b. That the Extension of the Product Variance allows the use of Interlux Fiberglass
15 Solvent Y202 solely for removing mold release compounds on unpainted fiberglass surfaces on
16 pleasure crafts and gel-coated boat hulls.

17 4. Applicant shall pay excess emission fees pursuant to District Regulation 3,
18 Schedule A.

19 B. All reports to the Hearing Board shall be in writing, in an original and nine copies,
20 and shall be addressed to Mary Romaidis, Clerk of the Hearing Board, Bay Area Air Quality
21 Management District, 939 Ellis Street, San Francisco, California 94109. Reports to other
22 offices or individuals at the Bay Area Air Quality Management District are not reports to the
23 Hearing Board.
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1 C. The APCO shall advise the Hearing Board in writing, in an original and nine copies,
2 of any violation of this Order.

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4 Moved by: Allan R. Saxe, Esq.

5 Seconded by: Terry A. Trumbull, Esq.

6 AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq.,
7 Terry A. Trumbull, Esq., Thomas M. Dailey, M.D.
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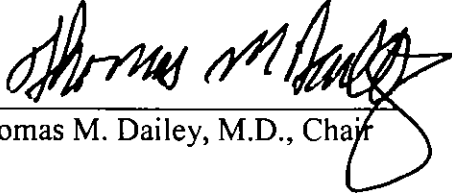
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Thomas M. Dailey, M.D., Chair

8-5-04
Date