

FILED

SEP 16 2010

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

**Lisa Harper**  
Clerk, Hearing Board  
Bay Area Air Quality  
Management District

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

In the Matter of the Application of )  
)  
**PRECISION CABINETS & TRIM** ) No. 3585  
)  
For a Variance from Regulation 8, Rule 32, ) ORDER GRANTING VARIANCE  
Section 303 )  
\_\_\_\_\_ )

The above-entitled matter is an Application for Variance from the provisions of Regulation 8, Rule 32, Section 303 of the Rules and Regulations of the Bay Area Air Quality Management District (“Regulation 8-32-303”). Although the Application for Variance is date-stamped filed on July 6, 2010, this was due to a mistake of the Clerk of the Hearing Board, and the Application is deemed filed on July 1, 2010. The Application requests relief for the period from July 1, 2010 through April 1, 2011.

Paul Taylor, President, Precision Cabinets & Trim, appeared on behalf of Precision Cabinets & Trim (“Precision Cabinets”).

Randi Wallach, Assistant Counsel, appeared for the Air Pollution Control Officer (“APCO”).

The Clerk of the Hearing Board provided notice of this hearing on the Application for Variance in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for variance on August 19, 2010. During the hearing, Precision Cabinets made an amendment to its application, amending the application from one seeking a

1 product variance to one seeking a regular variance. Precision Cabinets also made a motion to  
2 request a waiver of fees pursuant to District Regulation 3.

3  
4 The Hearing Board provided the public an opportunity to testify at the hearing as  
5 required by the California Health and Safety Code, but no one did so. The Hearing Board  
6 heard evidence, testimony and argument from Precision Cabinets and the APCO. The APCO  
7 did not oppose the granting of the variance, but requested that the variance be limited to a  
8 period no longer than is reasonably necessary for Precision Cabinets to come into compliance  
9 with Regulation 8-32-303.

10 The Hearing Board declared the hearing closed after receiving evidence, testimony and  
11 argument, and took the matter under submission for decision. After consideration of the  
12 evidence, the Hearing Board voted to grant the request for variance subject to certain  
13 conditions, as set forth in more detail below:

14 BACKGROUND

15 Precision Cabinets operates a custom cabinetry and moulding shop located at 145  
16 Middlefield Court, Brentwood, California ("Facility"). Precision Cabinets requests a variance  
17 from District Regulation 8-32-303. Regulation 8-32-303 provides that custom cabinetry shops  
18 such as the Facility must not use coatings with volatile organic compound ("VOC") content in  
19 excess of certain designated limits. Regulation 8-32-303 was amended on August 5, 2009; the  
20 amended regulation requires that custom cabinetry facilities comply with newly designated,  
21 lower VOC emissions limits, on or before July 1, 2010. Precision Cabinets applied for a  
22 variance to allow it time to come into compliance with the new VOC emissions limits in  
23 Regulation 8-32-303. Precision Cabinets requests that variance relief extend from July 1, 2010  
24 to January 1, 2011 (for sealers and top coats) and April 1, 2011 (for paints and stains).

1 Prior to June 2010, there was a miscommunication between Paul Taylor of Precision  
2 Cabinets and District staff. Mr. Taylor contacted District staff to inquire whether there were new  
3 VOC coatings limits that applied to the Facility. District staff mistakenly informed Mr. Taylor  
4 that there were no new VOC coatings limits that applied to the Facility. In early June 2010,  
5 District staff correctly confirmed with Mr. Taylor that Precision Cabinets must comply with the  
6 new coatings limits in amended Regulation 8-32-303.

7 Since early June 2010, Precision Cabinets has been aware that the Facility is subject to  
8 the new VOC limits for coatings in Regulation 8-32-303, and has been preparing to meet those  
9 limits by researching and testing new, compliant coatings. The Facility uses over twenty  
10 different material coatings products that will have to be replaced with new, compliant coatings in  
11 order to come into compliance with Regulation 8-32-303. Precision Cabinets has begun product  
12 testing, and has thus far had preliminarily successful results with compliant top coats and sealers.  
13 However, Precision Cabinets has not yet had successful results with compliant stains and paints.  
14 More testing of compliant stains and paints is needed. Mr. Taylor testified that, had he known  
15 that Precision Cabinets was subject to the new requirements in August of 2009 when the  
16 amendment to the Regulation was passed, Precision Cabinets would be in compliance at this time  
17 and would not need a variance.

18 Precision Cabinets has suffered with the current economic downturn. Several years ago,  
19 the company employed over three hundred persons and had revenue of over one million dollars  
20 per week. Last year, the company lost approximately three quarters of a million dollars, and  
21 currently Precision Cabinets employs approximately one hundred and twenty employees.

#### 22 DISCUSSION

23 The Hearing Board may excuse the payment of Hearing Board fees for any person who  
24 certifies under penalty of perjury that payment of fees will cause an unreasonable hardship. *See*

1 District Regulation 3, Schedule A, Note 1. Mr. Taylor testified that payment of fees would cause  
2 an unreasonable hardship. The Hearing Board agreed that payment of the variance filing fee and  
3 certain excess emissions fees would cause an unreasonable hardship, and decided to waive  
4 payment of the variance filing fee and certain excess emissions fees, as further described herein.

5 The Hearing Board may grant a variance upon finding that the criteria set forth in Health  
6 and Safety Code § 42352 are met. The burden is on the applicant, Precision Cabinets, to  
7 establish the basis for making each of the Findings. In this matter, Precision Cabinets has  
8 provided sufficient evidence to demonstrate that each of the criteria has been met.

9 Precision Cabinets is in violation of Regulation 8-32-303, because the Facility continues  
10 to using wood coatings that are not compliant with the VOC limits in Regulation 8-32-303,  
11 which were effective July 1, 2010.

12 The violation is the result of conditions beyond the reasonable control of Precision  
13 Cabinets and requiring immediate compliance would result in an arbitrary taking of property or  
14 the practical closing and elimination of a lawful business. Prior to the effective date of the  
15 revised Regulation 8-32-303, Precision Cabinets diligently contacted the District to inquire  
16 whether it was subject to the requirements. Precision Cabinets was at first given misinformation,  
17 and this misinformation was not corrected until early June, 2010 when the District confirmed  
18 with Mr. Taylor that Precision Cabinets must comply with the revised Regulation 8-32-303. In  
19 order to comply with the new requirements, a ramping up period is required during which  
20 Precision Cabinets tests new compliant coatings for effectiveness and desirability. This testing  
21 up period can last anywhere from a few months to many months, depending on the success of the  
22 compliant coatings that are tested. The longer the test period, the better the chances that a future  
23 failure of the coating will not occur, as some coatings fail over time and not immediately.

1 Precision Cabinets has begun testing compliant coatings; initial results show success with  
2 compliant top coats and sealers but failure with compliant stains and paints.

3 Because Precision Cabinets did not know it needed to comply with the new coatings  
4 limits until early June 2010, compliance by July 2010 would have been near impossible for the  
5 Facility, and this was not due to the fault of Precision Cabinets. The Facility has existing  
6 contracts for which it must continue to deliver finished product that meets customer expectations.  
7 Changing to compliant coatings that are not fully tested, or ceasing operations while testing is  
8 finished, would risk losing these contracts, and as a result, potentially losing the entire business.

9 The significant financial burden to Precision Cabinets of immediate compliance would  
10 outweigh a corresponding benefit in reducing air contaminants. Although the emissions resulting  
11 from the violation may be significant, the economic burden associated with shutting down the  
12 facility would be more so. Shutting down Precision Cabinets would result in a loss of  
13 approximately \$250,000.00 per week in revenue, and would result in one hundred and twenty  
14 employees losing their jobs. In addition, curtailing operations in lieu of a variance is not  
15 possible, as Precision Cabinets has existing contracts it must continue to deliver products on, and  
16 any operations with non-compliant coatings violate Regulation 8-32-303.

17 During the variance period, Precision Cabinets will reduce excess emissions as much as  
18 possible, by coming into compliance with Regulation 8-32-303 for top coats and sealers as  
19 quickly as possible, but no later than October 1, 2010. In addition, Precision Cabinets may be  
20 able to comply with Regulation 8-32-303 for some or all of the stains and paints it uses through  
21 an Alternate Compliance plan pursuant to Regulation 8, Rule 32, Sections 307 and 404. An  
22 Alternate Compliance plan allows facilities to demonstrate compliance with Regulation 8-32-303  
23 by averaging the VOC emissions of coatings used daily and limiting the average VOC emissions  
24 to 10% less emissions than the VOC emissions of compliant coatings. Because Precision

1 Cabinets has had initially positive test results with very low VOC top coats and sealers and  
2 because these coatings represent approximately 80% of the coatings it uses, it may be able to  
3 continue to use higher VOC stains and paints in combination with these new, very low VOC top  
4 coats and sealers and be in compliance with an Alternate Compliance plan. Precision Cabinets  
5 will investigate this compliance option.

6 SPECIFIC FINDINGS

7 The Hearing Board finds pursuant to Health and Safety Code section 42352 that:

8 1. As of July 1, 2010, Precision Cabinets has been and continues to be in violation of  
9 Regulation 8-32-303 of the District Rules and Regulations.

10 2. Due to conditions beyond the reasonable control of Precision Cabinets,  
11 requiring immediate compliance with Regulation 8-32-303 would result in an arbitrary and  
12 unreasonable taking of property or the practical closing of a lawful business.

13 3. The hardship due to requiring immediate compliance with Regulation 8-32-303  
14 would be without a corresponding benefit in reducing air contaminants.

15 4. Precision Cabinets cannot curtail operations in lieu of obtaining a variance  
16 without significant financial hardship.

17 5. During the variance period, Precision Cabinets will reduce excess emissions to  
18 the maximum extent feasible.

19 6. Precision Cabinets is required to keep daily records on coatings usage at the  
20 Facility per permit conditions and Regulation 8, Rule 32, Section 501.

21  
22 THEREFORE, THE HEARING BOARD ORDERS:

23 A variance from Regulation 8, Rule 32, Section 303 of the Bay Area Air Quality  
24 Management District Rules and Regulations is hereby granted, for the following time periods

1 and subject to the following conditions:

2 1. With respect to all top coats and sealers, a variance from the requirements of  
3 Regulation 8, Rule 32, Section 303 is granted from July 1, 2010 through October 1, 2010.

4 2. With respect to all stains and paints, an initial variance from the requirements  
5 of Regulation 8, Rule 32, Section 303 is granted from July 1, 2010 through October 1, 2010.

6 3. By September 20, 2010, Precision Cabinets must file a petition with the  
7 District, and submit a copy of said petition to the Hearing Board, pursuant to Regulation 8,  
8 Rule 32, Sections 307 and 404 for an Alternate Compliance plan for as many coatings as is  
9 possible to accommodate under an Alternate Compliance plan.

10 4. With respect to any stains and paints that are not covered by any Alternate  
11 Compliance plan submitted by Precision Cabinets pursuant to condition 3 and thereafter  
12 approved by the District, a further variance from the requirements of Regulation 8, Rule 32,  
13 Section 303 is granted from October 1, 2010 through April 1, 2011.

14 5. Precision Cabinets shall pay excess emissions fees for any excess emissions  
15 that result from the use of stains and paints that do not comply with Regulation 8, Rule 32,  
16 Section 303 and are not covered by any Alternate Compliance plan submitted by Precision  
17 Cabinets pursuant to condition 3 and approved by the District, during the time period  
18 beginning October 2, 2010 and continuing through April 1, 2011, pursuant to District  
19 Regulation 3, Schedule A.

20 6. Precision Cabinets shall submit to the Clerk of the Hearing Board two  
21 quarterly reports of excess emissions between October 2, 2010 and April 1, 2011, the first on  
22 or about December 1, 2010 and the second on or about April 1, 2011.

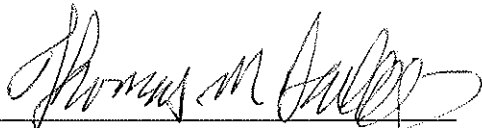
23  
24 Moved by: Christian Colline, P.E.

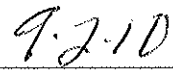
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Seconded by: Thomas M. Dailey, M.D.

AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., and Thomas M. Dailey, M.D.

NOES: Valerie Armento, Esq., Richard Grundy

  
\_\_\_\_\_  
Thomas M. Dailey, M.D., Chair

  
\_\_\_\_\_  
Date