

FILED

AUG - 1 2013

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT
Sean Gallagher
Clerk of the Boards
Bay Area Air Quality
Management District

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

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In the Matter of the Application of)
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REXAM BEVERAGE CAN COMPANY) No. 3651
)
For Short Term Variance from Regulation) ORDER GRANTING VARIANCE
8, Rule 11, Section 302, and Permit)
Condition #391, Items 2 through 11 (Plant)
#A1665))
_____)

The above-entitled matter is an Application for Short Term Variance (“Application”) by Rexam Beverage Can Company (“Applicant”) for relief from the provisions of Regulation 8, Rule 11, Section 302 of the Bay Area Air Quality Management District (“District”), and Permit Condition #391, Items 2 through 11, of Applicant’s permit to operate. The Applicant filed the Application on June 20, 2013, and requested relief for the period July 16, 2013, through July 19, 2013 (the “variance period”).

Geoffrey A. Wortley, Director of Environmental Health & Safety, and Bob Riggs, Plant Manager, appeared on behalf of the Applicant.

Simran Mahal, Legal Intern, and Nancy Wang, Assistant Counsel, appeared for the Air Pollution Control Officer (“APCO”) of the District.

The Clerk of the Hearing Board provided notice of this hearing on the Application in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for variance on July 11, 2013.

The Hearing Board provided the public an opportunity to testify at the hearing as required by the California Health and Safety Code, but no one did so. The Hearing Board heard evidence, testimony, and argument from the Applicant and the APCO. The APCO did not oppose the

1 granting of the variance.

2 The Hearing Board declared the hearing closed after receiving evidence, testimony, and
3 argument, and took the matter under submission for decision. After consideration of the evidence,
4 the Hearing Board voted to grant the request for variance, as set forth in more detail below:

5 BACKGROUND

6 Rexam Beverage Can Company operates a beverage can making facility located at 2433
7 Crocker Circle in Fairfield, California (the "Facility"). The Facility operates under a major facility
8 review permit (Title V permit) issued by the District under District Regulation 2, Rule 6.

9 District Regulation 8, Rule 11, Section 302 states that an applicant may use "coatings with
10 VOC contents in excess of the limits specified in Section 8-11-301 . . . provided that emissions of
11 VOCs to the atmosphere are controlled to an equivalent level by air pollution abatement equipment
12 with an abatement device efficiency of at least 90 percent that meets the requirements of Regulation
13 2, Rule 1." The Applicant ordinarily complies with Regulation 8-11-302 by operating a Regenerative
14 Thermal Oxidizer ("RTO"), designated "RTO A-9" by the District, during the can manufacturing
15 process.

16 Permit Condition #391, Items 2 through 11 of the Applicant's permit to operate require the
17 Facility to meet certain conditions to ensure compliance with Regulation 8-11-302 (as well as other
18 applicable requirements such as District BACT requirements (Regulation 2-2-301)). For example,
19 Item 2 requires the Applicant to operate RTO A-9 to collect and control VOC emissions from oven
20 sources S-2, 4, 5, 6, 8, 10, 11, and 12 any time any of the ovens is in operation. Permit Condition
21 #391, Items 2 through 11, are attached to this Order as Exhibit 1 and incorporated herein.

22 On May 9, 2013, during an annual manufacturer's inspection of RTO A-9, the manufacturer
23 discovered that the ceramic heat exchanger media bed of the RTO was becoming plugged with silicon
24 dioxide, a component of coatings used for certain customers. The Applicant testified that it will be
25 necessary to shut down RTO A-9 and wash and replace the ceramic heat exchanger media bed. At the
26 same time, however, the Applicant asserts that it must continue to run its production lines in order to

1 meet existing customer commitments. The Applicant testified that failure to shut down RTO A-9 and
2 perform the necessary cleaning and repairs could result in damage to or failure of the RTO.

3 DISCUSSION

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

8 The Applicant has demonstrated that RTO A-9 must be cleaned and repaired at this time, and
9 that shutting down the device is necessary to do so. At the same time, the Applicant has demonstrated
10 that it must continue production during the shutdown period (without abatement) to meet existing
11 customer commitments and avoid significant financial hardship.

12 During the hearing, the Applicant demonstrated that the plugging problem that it seeks to
13 rectify during the variance period has not been encountered before at this Facility, or in any of the
14 Applicant's other can manufacturing facilities, despite the fact that all of the facilities use the same,
15 industry-standard coatings and RTO equipment. The Applicant suspects that the problem at RTO A-9
16 may be related to the unique configuration of this Facility's production line; however, the Applicant's
17 investigation is ongoing. The Applicant has agreed to take several mitigation measures during the
18 variance period, and has also stated that it has a maintenance plan in place to avoid this plugging
19 problem in the future. Under these circumstances, the Hearing Board finds that granting a short term
20 variance is appropriate.

21 SPECIFIC FINDINGS

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

23 1. The Applicant will be in violation of Regulation 8, Rule 11, Section 302 of the District
24 Rules and Regulations, and Permit Conditions #391, Items 2 through 11, if the Applicant continues
25 production while RTO A-9 is shut down for cleaning and repairs. However, the Applicant must
26

1 continue production during the shutdown period (without abatement) to meet existing customer
2 commitments and avoid significant financial hardship.

3 2. Due to conditions beyond the reasonable control of the Applicant, requiring
4 compliance with Regulation 8, Rule 11, Section 302 and Permit Conditions #391, Items 2 through 11,
5 would result in an arbitrary or unreasonable taking of property. The Hearing Board finds that the
6 plugging problem in RTO A-9 that the Applicant seeks to resolve was the result of conditions beyond
7 the reasonable control of the Applicant. The manufacturer inspects RTO A-9 on an annual basis, and
8 first discovered the plugging on May 9, 2013. This problem has not occurred with any RTO operating
9 at any of the Applicant's other facilities, despite the fact that all of the Applicant's facilities use the
10 same, industry-standard coatings and RTO equipment. The problem could not have been reasonably
11 foreseen or prevented by the Applicant.

12 3. The hardship due to requiring compliance with Regulation 8, Rule 11, Section 302
13 and Permit Conditions #391, Items 2 through 11, would be without a corresponding benefit in
14 reducing air contaminants. Continued compliance (operation of RTO A-9 during production) could
15 damage RTO A-9 and/or cause the device to fail, which would lead to an uncontrolled emissions
16 event. Under the terms of this variance, the Applicant will curtail operations and minimize
17 emissions during a limited variance period of no more than four (4) days.

18 4. For the Applicant to curtail operations in lieu of obtaining a variance, the Applicant
19 would have been forced to cease production during the shutdown period. The Applicant could not
20 have done so without significant financial hardship. The Applicant stands to lose \$350,000.00 and
21 lay off 79 employees if the variance is not granted.

22 5. This Order will require the Applicant to reduce excess emissions to the maximum
23 extent feasible by taking the mitigation measures set forth in this Order.

24 6. This Order will require the Applicant to monitor and quantify emissions from the
25 Facility during the variance period and report these emissions to the District.

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THEREFORE, THE HEARING BOARD ORDERS:

A variance from Regulation 8, Rule 11, Section 302 of the Bay Area Air Quality Management District Rules and Regulations, to the extent that it requires compliance with Permit Condition #391, Items 2 through 11, of the Facility's permit to operate, is hereby granted for the period July 16, 2013 through July 19, 2013 only, provided that the following conditions are met:

(1) The Applicant ceases all basecoating during the variance period;

(2) The Applicant completely shuts down one production line for a period of no less than 12 hours during the variance period;

(3) The Applicant reduces production on the other production line by 50% for a period of no less than 12 hours during the variance period;

(4) The Applicant monitors and quantifies emissions from the Facility during the variance period and provides these emissions and supporting data and calculations to the District no later than 30 calendar days following the date of this Order; and

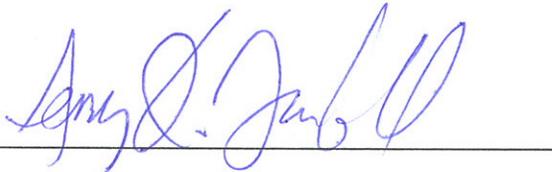
(5) The Applicant pays excess emissions fees calculated in accordance with District Regulation 3 for all emissions from the Facility during the variance period.

Moved by: Valerie Armento Esq.

Seconded by: Gilbert Bendix, P.E.

AYES: Julio Magalhães, Ph.D., Gilbert Bendix, P.E., Peter Chiu, M.D., P.E., Valerie Armento Esq., and Terry A. Trumbull, Esq.

NOES: None



Terry A. Trumbull, Esq., Chair

August 1, 2013

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

In the Matter of the Application of)
)
REXAM BEVERAGE CAN COMPANY,) NO. 3651
)
For Short Variance from Regulation 8, Rule)
11, Section 302, and Permit Condition #391,) CERTIFICATE OF SERVICE
Items 2 through 11 (Plant #A1665).)
_____)

STATE OF CALIFORNIA)
) ss.
City and County of San Francisco)

I, Sean Gallagher, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above entitled action; that I served a true copy of the attached Order Granting Variance on:

Bob Riggs
Rexam Beverage Can Company
2433 Crocker Circle
Fairfield, CA 94533

by depositing same in the United States certified mail, return receipt requested, on August 12, 2013; and on

Simran Mahal
Legal Intern
Bay Area Air Quality Management District
939 Ellis Street, 7th Floor
San Francisco, CA 94109

by hand-delivery deposit of same in the in-box of the District Counsel's office, on August 12, 2013.

DATED: August 12, 2013



Sean Gallagher
Clerk of the Boards