

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of :

A Request for a Declaratory Ruling by : DECLARATORY
C. A. BOVARD CO., INC., under : RULING 15-01
Section 204 of the State Administrative :
Procedure Act :

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C. A. Bovard Co., Inc. ("Bovard") submitted a request to the General Counsel's Office of the Department of Environmental Conservation of the State of New York ("Department") for a determination as to the applicability of Article 15, Title 3, Section 15-0314 of the Environmental Conservation Law to the importation and installation of six blowout toilets which do not conform to the water saving performance standards of the Act. The request was made by letter dated January 25, 1980, and received January 28, 1980.

As this is the first declaratory ruling to be made as to this law, let us review its provisions before examining Bovard's request. The provision at issue went into effect January 1, 1980. It establishes an initial penalty of not more than five hundred dollars and an additional penalty of five hundred dollars for each day during which the violation continues, for the distribution, sale, offering for sale, importation or installation of any sink faucet or lavatory faucet, shower head, urinal or toilet or associated flush-valve which does not meet the standards (§§15-0314(6) and 71-3903). The Act provides that the Commissioner of the Department may permit the sale and installation of toilets and associated flush-valves which do not meet the standards if the Commissioner determines after application therefor that the installation of fixtures which meet such standards

would be detrimental to the operation of the existing sewage system or the part of such system servicing such fixtures (§15-0314(4)).

The Act also states that it does not apply to fixtures installed in New York State prior to January 1, 1980, which are relocated within the same building, nor to fixtures which have been ordered by or are in the inventory of contractors, wholesalers, or retailers on or before January 1, 1980 (§15-0314(5)).

The Act also exempts fixtures which, in order to perform a specialized function, cannot meet the standards. The Act presents as examples of such fixtures safety showers and aspirator faucets (§15-0314(5)).

No provision is made in the Act for projects which are under construction or virtually completed as of the effective date of the Act, January 1, 1980.

Let us turn now to Bovard's situation.

It is my understanding that a blowout toilet does not have a tank but operates under 25 pounds of pressure to flush out the bowl through its larger exit pipe. It is more expensive than a tank toilet and is used in public places because it is less apt to break down and is less subject to vandalism than a tank toilet. However, because all its piping is in the wall behind it, it is more expensive to fix or replace than a tank toilet.

Bovard wants six blow out toilets to replace bowls which were installed in the new Olympic Center in Lake Placid during 1979 while the building was being constructed. These six have either been broken during installation or have proven to be defective. Bovard knew before 1980 that some replacements were needed but waited to order all the replacements at once. The building is still receiving

its finishing touches in order to be used for the Olympics and eventually turned over by the Federal Economic Development Agency which built it to the Town of North Elba. The first Olympic event scheduled to take place in the Field House will be on February 12, 1980. There are 37 remaining blowout toilets which have not proved defective.

Bovard explained:

"The original specifications for the building were written in early 1977 and construction began later that year. All the piping, carriers, valves etc. for these bowls are now concealed in concrete walls and cannot be changed without a major modification to the building which would be prohibitive not only from a cost standpoint but also from a time standpoint."

Bovard states that there is no alternative product manufactured for the type of installation already in place which can conform with the standards of §15-0314.

Although this situation as to blowout toilets may lead to an interpretation of the specialized function provision in §15-0314(5), there is no need to reach this issue here. The legislative intent of section 15-0314(5) and special laws passed in support of the 1980 Winter Olympics make such an interpretation unnecessary. Section 15-0314(5) excluded not only supplies of nonconforming fixtures in stock within the state as of the effective date, but also any fixtures on order by that date, clearly to allow suppliers and installers an opportunity to stock any nonconforming item they knew they would need. Three laws to support the 1980 Winter Olympics at Lake Placid demonstrate the legislature's commitment to this event. These laws set up the temporary state commission on the Olympics and appropriate funds in support of the games, take over the public lodging

facilities during the games and control and regulate the use of transportation facilities in a three-county area encompassing the Olympic site. (L. 1974 C. 793; L. 1977 C. 912; L. 1978 C. 521)

Therefore, I find that legislative intent would not be served by a declaratory ruling which denied Bovard its six blowout toilets. Bovard may import and install the six blowout toilets it has requested.


Richard A. Persico
General Counsel/Deputy Commissioner

DATED: January 26, 1980
Albany, New York