

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Petition of

NEW YORK HARDBOARD AND PLYWOOD CORPORATION

DECLARATORY
RULING

for a Declaratory Ruling Pursuant to
State Administrative Procedure Act §204

DEC 19-06

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INTRODUCTION

New York Hardboard and Plywood Corporation ("New York Hardboard"), by its attorneys, Kantor, Bernstein and Kantor, has petitioned for a Declaratory Ruling, pursuant to §204 of the State Administrative Procedure Act and 6 NYCRR Part 619, on the applicability of 6 NYCRR Part 228 ("Surface Coating Processes") to New York Hardboard's paint shop facility located in Brooklyn, New York. The question whether the type of activity engaged in by New York Hardboard is regulated under Part 228 presents a case of first impression. It is in the public interest to grant the petition and issue a Declaratory Ruling to inform New York Hardboard, the industry and the public of the scope of Part 228.

FACTS

For the sole purpose of this Ruling, the facts as set forth in the Petition are assumed to be correct. As stated in the Petition, New York Hardboard, which is located in a nonattainment

area for ozone, produces components for custom advertising displays. The company obtains unfinished hardboard and particleboard¹ which it machines at its fabricating shop. The machined material is then moved to New York Hardboard's separate paint shop where it is coated in a process which involves application of a sealer to the board's surface using a direct roller coater, and a subsequent application of a topcoat using a curtain coater. The annual emissions of volatile organic compounds from this process are less than 100 tons per year.

After being coated, customized finished components are shipped for final assembly. The assembled displays are not permanently affixed by New York Hardboard's customers, nor do the displays become a permanent part of the customer's walls or fixtures, or part of either the interior or exterior of a building.

Each job is individually designed by the customer and requires custom paint, artwork, silkscreening or similar procedures. No single job is repeated, and no single display constitutes over three to four percent of the firm's gross annual revenues.

DISCUSSION

The question presented is whether Part 228 regulates the coated product line produced by New York Hardboard. Part 228,

¹ About 72 percent of the material used is "Class I Hardboard", 18 percent is "Class II Hardboard", and the remainder is other wood materials.

entitled, "Surface Coating Processes" applies, inter alia, to any owner or operator of a facility involving a coating line which is described in Table 1 of section 228.7 or in Table 2 of section 228.8, and which is located in the New York City metropolitan area. 6 NYCRR §228.1. "Coating line" is defined as "[e]mission sources associated with the application, conveyance and drying of coating material onto a surface." 6 NYCRR §228.2(b). Table 1 lists 10 categories of coating lines, some with more than one product line. Table 2 lists only one category, "Coating lines for flat wood surface finishing," with three product lines. Table 2, which is the relevant table here, states in its entirety:

Table 2

<u>Process, emission source and description of products</u>	<u>Maximum permitted pounds of organic solvent per 1000 square feet of finished product</u>
Coating lines for flat wood surface finishing	Printed interior panels made of hardwood, plywood ² and thin particle board. 6.0
	Natural finish hardwood plywood panels. 12.0
	Hardboard paneling with finishes that meet the specifications of Voluntary Product Standards PS-59-73. 10.0

² In the amendments to Part 228, as filed, the correct phrase is "hardwood plywood", whereas in the printed regulation it reads "hardwood, plywood," giving the erroneous impression that hardwood and plywood are two separate components. The Department has requested the Department of State to have this error corrected.

While the initial column of Table 2 specifies the "process" being regulated ("flat wood surface finishing"), the second column, concerning the "emission source" and "description of products", limits the applicability of the regulatory requirements to only the three specified product categories. Given that New York Hardboard's process involves the coating of flat wood surfaces, the issue at hand is whether the materials produced by New York Hardboard fit within the product lines enumerated in Table 2 of Part 228.

Part 228 was based, in relevant part, on guidance from the United States Environmental Protection Agency (EPA) intended to assist State and local agencies in the development of air pollution control regulations for surface coating industries. The EPA guidance document, entitled Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VII: Factory Surface Coating of Flat Wood Paneling, EPA-450/2-78-032, OAQPS No. 1.2-112, June 1978 ("Flat Wood Paneling"), is directed at the control of volatile organic compounds from facilities that mass-produce wall paneling for the construction industry. The EPA guidance document recommends limitations on the total solvent content of coatings applied to the following paneling products:

- ° Printed interior wall panels made of hardwood plywood and thin particleboard
- ° Natural finish hardwood plywood panels

- ° Class II finishes for hardboard paneling³.

The EPA guidance cautions that the limits provided "are based on capabilities and characteristics which are general and therefore presumed normal to the flat wood industries" and that "the limits may not be applicable to every plant within the industry." Flat Wood Paneling, p.iii. The guidance goes on to make clear that the "[p]refinished flat wood construction products included in this document are interior paneling made of wood materials such as plywood, particleboard, and hardboard" and that "other significant categories of factory finished flat wood products - exterior siding, tileboard, and particleboard used as a furniture component are not reviewed in this document nor are emission limitations suggested." Flat Wood Paneling, p. 1-1, vi. Despite the acknowledgment "there will be an increase in the factory surface coating of flat wood products due to the increased use of the prefinished wood in the building trade (including recreational vehicles) for paneling, flooring, cabineting, molding, and exterior siding", the document emphasizes that "only paneling is covered in this report". Flat Wood Paneling, pp. 1-3, 1-4, emphasis added.

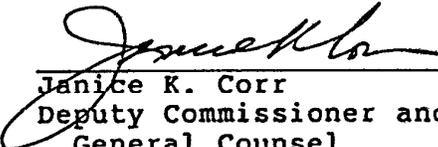
³ Part 228 expanded the product line beyond the EPA guidance to cover both Class I and II of the Voluntary Product Standard ("VPS"). The EPA guidance covers hardboard paneling with Class II finishes, i.e., Class II finishes "which meet the specification of Voluntary Product Standard [VPS] PS-59-73 as approved by the American National Standards Institute." Flat Wood Paneling, p.vii. Table 2 of Part 228 includes all hardboard paneling with finishes which meet the VPS PS-59-73, and thus includes Class I as well as Class II finishes.

The types of flat wood surface coating described in the EPA guidance, and subsequently adopted in Table 2 of Part 228, do not include the activities of New York Hardboard. The products covered by Table 2 are mass-produced wood paneling coated on assembly lines for use by the building industry. The EPA guidance and Table 2 of Part 228 are specifically intended to provide emission limitations that can be achieved through the application of reasonably available control technology to processes for the mass production of standardized factory-finished paneling.

New York Hardboard, on the other hand, machines at its fabricating shop a variety of materials for use as parts in custom advertising displays, and then coats approximately 70 percent of the machined material at its paint shop. Printed hardboard is purchased by New York Hardboard for jobs which require a natural woodgrain finish. Thus, the mass production of standard-sized or standard quality wood paneling occurs, if at all, before the paneling product is purchased by New York Hardboard to be finished according to customer specifications. Although New York Hardboard may use standard coating equipment (curtain coaters, roller coaters), its product line is neither mass-produced nor standardized (in terms of quality and quantity) paneling for long-term use in the construction industry; rather its product, customized displays, is akin to furniture and has a short-term life.

Although I conclude that 6 NYCRR 228 does not currently apply to this facility, I note that 6 NYCRR 212, "General Process Emission Sources", then would apply. Consequently, the source must be evaluated for compliance with Part 212. Moreover, this ruling does not preclude future rulemaking to regulate sources such as New York Hardboard should environmental considerations dictate that result.

DATED: Albany, New York
December 22, 1987



Janice K. Corr
Deputy Commissioner and
General Counsel