IEPA ATTACHMENT NO. 16

ILLINOIS POLLUTION CONTROL BOARD
August 6, 1998

IN THE MATTER OF:	)	
	)	
PETITION OF CENTRAL CAN COMPANY	)	AS 94-18
FOR AN ADJUSTED STANDARD FROM	)	(Adjusted Standard - Air)
35 ILL. ADM. CODE PART 218	)	

OPINION AND ORDER OF THE BOARD (by M. McFawn):

Before the Board is a petition for an adjusted standard filed by Central Can Company (CCC). CCC seeks an adjusted standard from various sections of 35 Ill. Adm. Code 218 so that it may apply cross-line averaging in calculating emissions of volatile organic materials (VOM) from its coating lines, on which it coats metal containers of various sizes and thicknesses. The Board finds that CCC has demonstrated that the grant of an adjusted standard is warranted, and grants the petition.

BACKGROUND

CCC produces metal containers at a plant located in Chicago, Illinois. CCC manufactures (and coats) six basic styles of cans and pails at its Chicago plant. Pet. Exh. 1 at 2. As defined in the Board's air regulations, a can is "any cylindrical single walled metal container, with or without a top, cover, spout or handles, with walls thinner than 29 gauge (0.0141 inch) into which solid or liquid materials may be packaged." 35 Ill. Adm. Code 211.830. A pail, on the other hand, is "any cylindrical shipping container of 1 to 12-gallon capacity and constructed of 29-gauge and heavier material." 35 Ill. Adm. Code 211.4430. Cans and pails may be identical except for the thickness of the steel from which they are made. Am. Pet. at 13. Volumes of cans and pails range from one-half quart to seven gallons. Pet. Exh. 1 at 2. CCC's customers choose the style, size, metal thickness, and interior and exterior coatings to be applied, depending on the intended use of the container. *Id.* CCC's containers are used for shipping a wide range of products, from vegetable oil to jet fuel. *Id.*

In the production of cans and pails, flat sheets of steel are coated, lithographed, formed, and assembled at the plant. The lithography section contains four coating lines, consisting of four coaters, four ovens, one waxer, and two afterburners. Sheet coating is done on four coating lines using roll coaters which apply solvent-based coatings to metal sheets. Vacuum vents above and below the coaters transfer vapors from the coater to the oven. Ovens cure the applied coatings at temperatures normally ranging from 325°F to 400°F. Spray painting is done in three main spray booths with minor spraying done in five small touch-up booths. The main booths use dry filters to catch overspray. After spraying, cans are cured on conveyers through ovens at temperatures normally ranging from 325°F to 450°F. Am. Pet. at 12.

CCC uses over 165 different coatings to manufacture its cans and pails. Am. Pet. at 13. Because CCC's cans and pails are coated with coatings containing VOM they are subject to emissions regulations under 35 Ill. Adm. Code 218.Subpart F. Res. Exh. 1 at 1.

Part 218 was adopted in 1991 in rulemaking proceeding R91-7. See In the Matter of: RACT Deficiencies in the Chicago Area (July 25, 1991), R91-7. As originally adopted, Part 218 included a definition of "can" which did not include wall thickness as an element. Although wall thickness was an element of the definition of "can coating," it was not an element of the definitions of "can coating line" or "can coating facility." *Id.*, slip op. at 26. Because one of the available compliance options refers to "can coating line" emissions, CCC took the position that it was in compliance in its coating operations, notwithstanding that it coated both cans and what are now defined as pails. The Illinois Environmental Protection Agency (IEPA) disagreed, and this dispute was the subject of a permit appeal, currently pending as PCB 92-176.

In 1993, in rulemaking proceeding In the Matter of: Omnibus Cleanup of the Volatile Organic Material RACT Rules Applicable to Ozone Nonattainment Areas (September 9, 1993), R93-9, the Board adopted "clean-up" amendments to various rules. The changes included moving definitions to Part 211, and revising the definition of "can" to include the thickness element. Thus, at least from the effective date of the rules adopted in R93-9, CCC could no longer demonstrate compliance using cross-line averaging for its coating operations due to its pail coating operation. Consequently, CCC filed its petition for an adjusted standard.

PROCEDURAL HISTORY

CCC filed its original petition for an adjusted standard on December 5, 1994. In an order dated January 11, 1995, the Board found that the petition was lacking certain required information, and directed CCC to file an amended petition by February 25, 1995. CCC filed an amended petition on February 24, 1995. The Board accepted CCC's amended petition in an order dated March 9, 1995.

Over subsequent months, CCC and IEPA negotiated terms of an adjusted standard. Because the adjusted standard, if granted, would require a revision of the Illinois state implementation plan (SIP) for ozone, CCC and IEPA also sought the approval of United States Environmental Protection Agency (USEPA). Upon certain representations from CCC regarding the percentage of pails to be coated, USEPA has approved the requested adjusted standard. Joint Exh. 3, 4. On May 5, 1998, IEPA filed its response to CCC's petition, recommending that the adjusted standard be granted, with certain conditions agreed upon with CCC. A hearing was held on June 15, 1998. At the hearing, CCC and IEPA submitted proposed language for an adjusted standard which was substantially the same as that proposed by IEPA in its response. Joint Exh. 5.

STATUTORY AND REGULATORY FRAMEWORK

Adjusted Standards

Section 28.1(a) of the Act (415 ILCS 5/28.1(a) (1996)) provides that the Board may grant adjusted standards from rules of general applicability. To obtain an adjusted standard, a petitioner must show that four criteria are met. The criteria are listed in Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (1996)), which provides:

> c. If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:
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> 1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
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> 2. the existence of those factors justifies an adjusted standard;
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> 3. the requested adjusted standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
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> 4. the adjusted standard is consistent with any applicable federal law.

The regulations relevant to CCC's adjusted standard petition do not specify a level of justification required to qualify for an adjusted standard. Therefore, the foregoing statutory criteria are applicable in this case.

VOM Emission Limitations for Coating Operations

35 Ill. Adm. Code 218.Subpart F contains the regulations governing emissions from coating operations, including coating of cans and miscellaneous metal parts.[1] There are several

[1] "Miscellaneous metal parts and products" are defined for the purpose of 35 Ill. Adm. Code 215.Subpart F in 35 Ill. Adm. Code 211.3830, and include "farm machinery, garden

methods by which a coating operation can comply with VOM limitations. The first and simplest is to use compliant coatings, *i.e.*, coatings with VOM contents less than regulatory limits. Section 218.204 sets forth the VOM limits for various types of coatings used in various coating processes. Subsection (b) of Section 218.204 establishes the limits for can coatings; subsection (j) establishes the limits for miscellaneous metal part coatings.

Another method of compliance with Subpart F is to average VOM contents of coatings to meet a daily weighted average limitation. Section 218.205 provides this option. Subsection (c) of Section 218.205 set forth the criteria and formulas for use of daily-weighted averaging by can coating operations; subsection (b) governs averaging on miscellaneous metal part coating lines.

The third option involves using pollution control equipment. This option is governed by Section 218.207. In general, a coating operation complies with Section 218.207 if a capture system and control device provides an 81 percent reduction in VOM emissions and the control device has a 90 percent efficiency, or the control device limits overall emissions to no more than would be allowed under Section 218.204. See 35 Ill. Adm. Code 218.207(b). Under subsection (d) of Section 218.207, a miscellaneous metal parts coating line may not be operated unless that line meets one of these two criteria. Under subsection (h), however, a can coating operation may average all can coating lines in order to meet an alternative daily emission limitation. Subsection (h) provides:

> No owner or operator of a can coating line which is equipped with a capture system and control device shall operate the subject coating line unless the requirements in subsection (h)(1) or (h)(2) of this Section are met.
>
> 1) An alternative daily emission limitation shall be determined for the can coating operation, i.e. for all of the can coating lines at the source . . . . Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of [an equation.]
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> 2) The coating line is equipped with a capture system and control device that provide 75 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency.

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machinery, small appliances, commercial machinery, industrial machinery, fabricated metal products and any other industrial category in which metal parts or products under the Standard Industrial Classification Code for Major Groups 33, 34 35, 36, 37, 38, or 39 are coated, with the exception of the following: coating lines subject to 35 Ill. Adm. Code 215.204(a) through (i) and (k), architectural coatings, automobile or light-duty truck refinishing, the exterior of marine vessels and the customized top coating of automobiles and trucks if production is less than 35 vehicles per day." Under this definition, pails are miscellaneous metal parts.

CCC seeks to use cross-line averaging as provided for in Section 218.207(h)(1) for its coating lines which coat both cans and pails. Without an adjusted standard, CCC would have to meet the more stringent requirements of subsection (d), at prohibitive expense. CCC estimates that compliance with subsection (d), through construction of four additional lines and eight additional spray booths (with associated capture and control devices), would cost $6 million, plus additional annual utilities costs of $130,000 per ton of emissions control. Am. Pet. at 20-21, Res. at 7.

ANALYSIS

The Board first considers whether factors relating to CCC are substantially and significantly different from the factors relied upon by the Board when it adopted the rules in R91-7. In its response, IEPA explains that at the time the rules in R91-7 were adopted, no investigation was performed of can coating facilities that might also be miscellaneous metal part coaters. Res. at 10. The Board therefore finds that the impact of the rules in R91-7 on CCC, which coats cans and pails on the same lines, was not considered when the Board adopted those rules, and consequently the first requirement of Section 28.1(c) is met.

The next inquiry is whether the different factors relative to CCC justify an adjusted standard. As noted above, the cost of bringing CCC's operation into compliance exceeds USEPA's estimates for compliance with RACT limitations. CCC furthermore has little ability to modify its products in order to achieve compliance because the thickness of containers and the coatings to be applied to them are dictated by customers, some of whose specifications are subject to federal and international regulations over which CCC has no control. Consequently, if CCC stopped making containers of thicker steel (*i.e.*, pails as opposed to cans) or stopped using noncompliant coatings, it would lose a significant portion of its business. The Board therefore finds that an adjusted standard is justified.

The Board finds that granting the requested adjusted standard is unlikely to have any adverse effects on health or the environment. Under the proposed adjusted standard, pails will be coated on CCC's can coating lines, as if they were cans. The allowable VOM emission limits for can coating are the same or, in some cases, lower than the emission limits for miscellaneous metal parts (including pails). It follows therefore that emissions under the requested adjusted standard will be approximately the same as if CCC coated pails separately in accordance with Part 218.

Finally, the Board finds that this adjusted standard can be granted consistent with federal law. USEPA has been consulted and supports the adjusted standard. Joint Exh. 2, 3, 4.

CCC has asked that the Board grant the requested adjusted standard retroactively to July 1, 1991, the effective date of the rules adopted in R91-7. As a general rule, an adjusted standard is effective on the date of the order granting it. The Board has, however, granted retroactive relief where extraordinary circumstances have been present. See In the Matter of: Petition of Tommy House Tire Co., Inc. (March 21, 1996), AS 95-1, slip op. at 10; In the

Matter of: Petition of Waste Management, Inc. (April 6, 1995), AS 94-12, slip op. at 6. Given the circumstances present in this case, the Board finds that a retroactive adjusted standard is warranted. CCC was arguably rendered out of compliance by a rulemaking in which impact on facilities coating both cans and pails was not considered, and was definitely rendered out of compliance by amendments which were not considered substantive when enacted. See In the Matter of: Omnibus Cleanup of the Volatile Organic Material RACT Rules Applicable to Ozone Nonattainment Areas (September 9, 1993), R93-9, slip op. at 6 (changes described as "minor"). Additionally, achieving compliance by methods other than cross line averaging would have been prohibitively expensive without any significant reduction in VOM emissions. CCC acted diligently at all times to protect its position; the long delay between filing and resolution of this case (and PCB 92-176) appears based on the need to obtain agreement of multiple parties, including USEPA, rather than any dilatory activity by CCC. Joint Exh. 2-4. All parties (including USEPA) agree that the correct resolution of this matter is for CCC to receive this adjusted standard. The requested adjusted standard will be effective July 1, 1991.

CONCLUSION

Based on the foregoing analysis, the Board finds that CCC has met its burden and demonstrated that an adjusted standard is warranted.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

CCC is granted an adjusted standard, pursuant to 415 ILCS 5/28.1, from the requirements of 35 Ill. Adm. Code 218.204(j), 218.205, and 218.207, as they pertain to coating of cans and coating of pails, at CCC's facility located at 3200 S. Kilbourn Ave., Chicago, Illinois, as follows:

A) Notwithstanding the definitions of "can" (35 Ill. Adm. Code 211.830), "can coating line" (35 Ill. Adm. Code 211.870), "miscellaneous metal parts" (35 Ill. Adm. Code 211.3830), and "pail" (35 Ill. Adm. Code 211.4430), coating of pails is considered "can coating" and the requirements of 35 Ill. Adm. Code 218.Subpart F governing can coating, including Sections 218.204(b), 218.205(c), and 218.207(a) and (h) as hereinafter amended, apply to the coating of cans and pails on all coating lines, provided that:

1) No more than 20% of the total number of cans and pails on an annual basis are pails;

2) The pails are geometrically identical to cans coated at the facility, in terms of shape and volume; and

3) The pails are produced from metal with a thickness of no more than 20 gauge (0.039 in.).

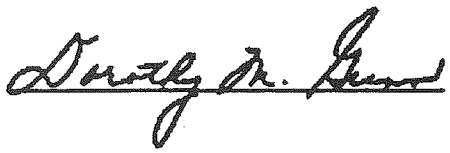
B) All other sections of 35 Ill. Adm. Code 218.Subpart F not specifically enumerated in Paragraph A above, except for Sections 218.204(j), 218.205(b), and 218.207(d), continue to apply to CCC.

C) This adjusted standard is effective July 1, 1991.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 6th day of August 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board