

ILLINOIS POLLUTION CONTROL BOARD
December 6, 1989

IN THE MATTER OF:)
)
THE SITE-SPECIFIC PETITION) R88-19
OF ROADMASTER CORPORATION)

PROPOSED RULE. SECOND NOTICE

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on a petition for a site-specific rulemaking filed July 19, 1988 by Roadmaster Corporation ("Roadmaster"). Roadmaster seeks relief from the Board's RACT II limitations on the maximum permissible volatile organic matter ("VOM") emissions from two flowcoater units at its manufacturing facility near Olney, in Robinson County, Illinois.

The Board proposed new section 35 Ill. Adm. Code 215.206(d) for first notice publication on July 13, 1989. That publication occurred on July 28, 1989. See 13 Ill. Reg. 12384 (July 28, 1989). The Board invited public comment on the proposed rule, specifically requesting a response to issues concerning (1) the number of paint vendors to be contacted; (2) the "substantial likelihood" of successful use that should prompt testing of a paint; (3) what constitutes a "compliant paint that it can successfully use"; (4) a price per gallon or other trigger requiring converting to the compliant paint; and (5) use of a five-year sunset provision.

The Board received five public comments as follows:

1. Secretary of State Office, Administrative Code Division;
2. Roadmaster Corporation;
3. Illinois Environmental Protection Agency;
4. Illinois Environmental Regulatory Group;
and
5. Illinois Department of Commerce and
Community Affairs.

In the First Notice Opinion and Order, the Board opted for certain language, not stipulated by the participants, in anticipation of possible problems that might arise before the Joint Committee on Administrative Rules ("JCAR") regarding the lack of specificity in the proposed regulation. To some extent,

the Board now retreats from that position in response to the parties' assertions that their stipulations, as to acceptable language, most accurately represent the agreement between the Agency and Roadmaster. After reviewing the record and comments, the Board finds that certain revisions are appropriate.

Thirty-day Opportunity to file Motion for Reconsideration

The Board will withhold submitting the proposed rule to the Joint Committee on Administrative Rules through January 8, 1990 in order to allow either participant to file a motion for reconsideration as to the sole issue of a proposed change in the language regarding item (4) above, i.e., a price per gallon or other trigger requiring converting to the compliant paint. As described more fully below, the Board now proposes to adopt Roadmaster's comment suggesting that finding a compliant paint, whose application costs are within 10 percent of current expenses, shall trigger Roadmaster's converting to the use of the new paint.

Section 215.206(d)(1) Unchanged From First Notice

At first notice, the Board modified the language proposed by the Agency and Roadmaster concerning Roadmaster's continuing efforts to find a compliant coating. Reference to a "compliant coating" is meant to denote paint which would generate VOM emissions within compliance levels permitted under Section 215.204(k)(2). Instead of a "reasonable number," the Board specified that "at least three paint vendors" shall be contacted annually by Roadmaster in an effort to locate a compliant coating. The Board intended to quantify the effort required of Roadmaster and in first notice comments, both the Agency and Roadmaster found this acceptable. They further agreed to the first notice language proposed by the Board that Roadmaster shall also contact any other vendors suggested by the Agency specifically by certified mail. This, too, is intended to clarify the continuing efforts required of Roadmaster.

Section 215.206(d)(2) Unchanged From First Notice

The requirement that Roadmaster shall test a paint where laboratory results "demonstrate a substantial likelihood that Roadmaster might successfully use a paint..." shall be the same as at first notice. Both the Agency and Roadmaster favored this language. Despite the lack of specificity, the Board intends that the compliant paint, which Roadmaster might "successfully use" (as referenced in Section 215.206(d)(2) and (4)), would meet common industry standards. Such standards are not to be repeated in the regulation or incorporated by reference, but should be used by the Agency and Roadmaster to interpret the regulation on what would constitute a substantial likelihood of successful use. As Roadmaster put forth in its first notice comments, the

American Society of Testing Methods ("ASTM") provides guidelines, which the Agency and Roadmaster may utilize in evaluating the regulatory language.

Roadmaster suggests that the types of paints it will seek to test will possess the following attributes:

1. Comply with ASTM F-963-4.3.5 (contents);
2. Pass an intrusion and extrusion impact test of 30 inch-pounds according to ASTM D-2794;
3. Pass an adhesion tape test with a classification of 4B or 5B according to ASTM D-3359;
4. Possess a minimum gloss of 80 when measured with a 60 degree angle of deflection according to ASTM D-523; and
5. Color match with existing coating Pantone System.

Section 215.206(d)(3) Unchanged From First Notice

Neither the Agency nor Roadmaster objected to the Board's first notice addition of a definite date (March 1) for the annual reporting of compliance efforts previously agreed to by the participants. The provision will be unchanged from first notice.

Section 215.206(d)(4) Revised to replace cost per gallon standard

In order to achieve more specific regulatory language, the Board will propose for second notice the recommendation of Roadmaster that the compliant paint shall be adopted for use if not more than 10 percent more costly than the paint currently used. The test to determine whether Roadmaster must come into compliance is whether it has found a paint, which would bring its VOM emissions within permitted limits, while also being an economically reasonable alternative. However, in lieu of the "economically reasonable" language proposed at first notice, Roadmaster has offered the more specific language: "the net annual expense of using the compliant paint is not more than 10 percent greater than the net annual expense incurred in the current painting process." The Board prefers this more definite standard, which would mandate compliance automatically. At second notice, therefore, the Board will propose this modified version of the Roadmaster suggestion: "the net annual expense of using the compliant paint is not more than 10 percent greater than the then current net annual expense incurred in the existing painting process (changes underlined). The Board recognizes that

no paint, at any cost, has become available since Roadmaster began its search in 1986. As noted in the First Notice Opinion and Order, Roadmaster asserts that a wholesale price increase of as little as 4 or 5 cents would impact sales and a 13 cent increase would cut sales by 50%. Roadmaster's continuing operations are thus highly sensitive to the effective cost of compliant paints, whose costs to purchase and apply are unknown because of technological unavailability. For these reasons, the Board accepts Roadmaster's 10 percent figure, although the language is somewhat atypical of other rulemakings.

The Board also added at first notice the requirement that, when an economically acceptable compliant paint becomes available, Roadmaster must convert to using that paint within 180 days, rather than "within a reasonable time" as the parties stipulated. The Agency and Roadmaster agreed to the Board's "tightening" of the regulatory language in their first notice comments.

IERG takes exception to the Board's use of the sunset provision described below, as well as to the above-referenced requirements in subsections (1) through (4). IERG argues that (1) Section 27 of the Illinois Environmental Protection Act ("Act") does not specifically authorize compliance conditions in site-specific rulemaking; (2) such Board action would be arbitrary; and (3) the record does not support the conditions. IERG suggests that the Board is granting Roadmaster a variance, in effect, rather than permanent relief and requiring the equivalent of a compliance plan. In summary, IERG recommends the approval of the site-specific limitations without the five requirements delineated in subsections (1) through (5).

Section 27(a) of the Act grants the Board the authority to allow for site-specific regulatory relief. In making its determination, the Board is directed to consider the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. Since these considerations are by no means static, the Board is not persuaded by IERG's assertion that site-specific relief must be absolute and open-ended. The decision of the Board to include various requirements in the granting of site-specific relief is consistent with past Board decisions, is not contrary to statute, and is consistent with the Act's purpose, stated in Section 8(a), "to restore, maintain, and enhance the purity of the air of this State."

In R85-11, Petition for Site-Specific Exception to Effluent Standards for the Illinois-American Water Company, East St. Louis Treatment Plant, the Board granted site-specific relief at 35 Ill. Adm. Code 304.220 from the effluent standards of 35 Ill. Adm. Code 304.124. In that rulemaking the Board required that (1) petitioner use only biodegradable coagulants and that (2) petitioner would conduct a comprehensive, multi-faceted study

with regard to the coagulants. Furthermore, the new section expires automatically on January 1, 1992. Similarly, the relief to be granted to Roadmaster is predicated upon Roadmaster's meeting the above-outlined requirements.

While, in the absence of available technology, this type of regulation may be in the nature of a "technology forcing" regulation, the Illinois Supreme Court has held that such Board action to meet environmental goals is within the Board's statutory authority:

It is well within the power of the Board, in safeguarding the public health, to determine what is the maximum pollution tolerable from any one source, and to refuse to permit deviations from that maximum even when faced with protestations of impossibility. A concomitant of this absolute power is the commonly exercised prerogative of the Board to promulgate "technology forcing" standards. That is, to hasten ultimate compliance with a statewide standard, the Board may establish an interim standard which, though not impossible to satisfy, is beyond the polluter's present technical capability. In short, it is not necessarily arbitrary and capricious conduct for the Board to set a standard which a petitioner cannot adhere to at the present time, or, if absolutely necessary to protect the public, set a standard with which there can be no foreseeable compliance by petitioner.

Monsanto Company v. The Pollution Control Board, 67 Ill.2d 276, 292, 293, 367 N.E.2d 684 (1977).

This reasoning was also relied upon by the Fifth District, which upheld the Board's "technology forcing" authority in The Flintkote Company v. Pollution Control Board, 53 Ill.App.3d 665, 368 N.E.2d 984, 987, 988 (Fifth District, 1977).

Sunset Provision Increased to Ten Years from Five Years

The Agency, Roadmaster and IERG have requested that the sunset provision be completely deleted. The parties noted that the regulation already provides for automatic mandatory compliance within 180 days when that is technologically possible at a reasonable cost. The Board added the sunset provision, which originally gave Roadmaster up to five years to comply, because the Board observed that technological developments might allow compliance to be achieved within that timeframe. The

burden would be on Roadmaster to meet the timetable or petition the Board to extend the deadline as it approaches. The Board has previously used sunset provisions, and it finds the present circumstances appropriate for limiting the regulatory relief. The Board now is extending the timeframe to ten years in response to concerns that five years may be an inadequate amount of time to achieve compliance.

Section be known as Section 215.214 Roadmaster Emission Limitations

In response to suggestions from the Secretary of State's Office, the Board will renumber Section 215.206(d), as Section 215.214. Since the proposed regulation has an automatic repeal date, pursuant to 1 Ill. Adm. Code 100.335, the section must be a complete and new section. Section 215.214 shall be labeled Roadmaster Emission Limitations. In addition, Section 215.214(e) will state "This Section shall expire...", instead of "Subsection 215.206(d) shall expire...." The subsections are renumbered accordingly (a) through (e).

ORDER

The Board hereby proposes the following rule for second notice publication and directs the Clerk of the Board to file it with the Office of the Secretary of State.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSIONS STANDARDS AND LIMITATIONS FOR
STATIONARY SOURCES

PART 215
ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS

SUBPART F: COATING OPERATIONS

Section	
215.202	Compliance Schedules
215.204	Emission Limitations for Manufacturing Plants
215.205	Alternative Emission Limitations
215.206	Exemptions from Emission Limitations
215.207	Compliance by Aggregation of Emission Sources
215.208	Testing Methods for Solvent Content
215.209	Exemption from General Rule on Use of Organic Material
215.210	Alternative Compliance Schedule
215.211	Compliance Dates and Geographical Areas
215.212	Compliance Plan
215.213	Special Requirements for Compliance Plan
<u>215.214</u>	<u>Roadmaster Emissions Limitations</u>

Section 215.214 Roadmaster Emissions Limitations

Notwithstanding the limitations of Section 215.204(j)(3), the Roadmaster Corporation, Olney, Illinois, shall not cause or permit the emission of volatile organic material from its existing black and white flowcoating operations to exceed a weekly average of 5.9 lb/gal; Roadmaster shall fulfill all of the following conditions:

- a) Roadmaster shall contact at least three paint vendors each year in a continuing search for a compliant coating that it can successfully use in its existing flowcoating/oven operations, including any paint vendors suggested by the Agency in a writing delivered to Roadmaster by certified mail;
- b) If any vendor provides Roadmaster with laboratory test results which demonstrate a substantial likelihood that Roadmaster might successfully use a paint in its existing flowcoater and oven, Roadmaster will conduct production tests of that paint;
- c) Roadmaster will submit a report to the Agency by March 1 of each year that includes a summary of its efforts during the preceding calendar year, as those efforts relate to Roadmaster's compliance with the foregoing conditions contained in subsections (1) and (2), above;
- d) If Roadmaster locates a compliant paint that it can successfully use in its existing flowcoating operations, and the net annual expense of using the compliant paint is not more than 10 percent greater than the then current net annual expense incurred in the existing painting process, Roadmaster shall convert its present flowcoating operations to the use of that paint within 180 days after the final successful testing of such a paint; and
- e) This Section shall expire on January 1, 2000, at which time Roadmaster shall comply with the provisions that generally apply to VOM emissions.

(Source: Added at ___ Ill. Reg. ____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Second Notice Opinion and Order was adopted on the 6th day of December, 1989, by a vote of 6-0.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board