

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN RE THE MATTER OF:)
)
 REASONABLY AVAILABLE CONTROL)
 TECHNOLOGY (RACT) FOR)
 VOLATILE ORGANIC MATERIAL)
 EMISSIONS FROM GROUP III)
 CONSUMER & COMMERCIAL)
 PRODUCTS: PROPOSED)
 AMENDMENTS TO 35 Ill. Adm.)
 Code 218 and 219)

No. R10-10
(Rulemaking- Air)

REPORT OF PROCEEDINGS held in the
 above-entitled cause before Hearing Officer Timothy
 Fox, called by the Illinois Pollution Control Board,
 taken before Laura Mukahirn, CSR, a notary public
 within and for the County of Cook and State of
 Illinois, at the James R. Thompson Center, 100 West
 Randolph Street, Chicago, Illinois, on the 9th day
 of December 2009, commencing at the hour of 10:00
 a.m.

A P P E A R A N C E S

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MR. TIMOTHY FOX, Hearing Officer
MR. THOMAS JOHNSON, Member
MR. ANAND RAO, Member
MS. ANDREA S. MOORE, Member
MS. CARRIE K. ZALEWSKI, Member
 Appearing on behalf of the Illinois
 Pollution Control Board;

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
 Appearing on behalf of the IEPA.

ALSO PRESENT:

MR. ROBERT J. KALEEL - IEPA
Manager, Air Quality Planning Section, Bureau of Air
MR. YOGINDER MAHAJAN - IEPA
Environment Protection Engineer, Bureau of Air

1 HEARING OFFICER FOX: The time of
2 10:00 a.m. having come and gone, I want to
3 wish everyone a good morning and welcome to
4 this Illinois Pollution Control Board
5 hearing. My name is Tim Fox, and I am the
6 hearing officer for this rulemaking
7 proceeding which is entitled Reasonably
8 Available Control Technology, R-A-C-T,
9 pronounced RACT, for volatile organic
10 material emissions from Group III consumer
11 and commercial products, proposed amendments
12 to 35 Illinois Administrative Code 218 and
13 219.

14 I want to introduce as also
15 present from the board today, at my immediate
16 left is board member Andrea Moore who is the
17 lead board member for this rulemaking. And
18 at her left, board member Carrie Zalewski.
19 At my far right is board member Thomas E.
20 Johnson, and at my immediate right is Anand
21 Rao of the board's technical staff. The
22 board docket number for this rulemaking is
23 R10-10.

24 The Illinois Environmental

1 Protection Agency filed this rulemaking
2 proposal on October 23, 2009, under the,
3 quote, fast-track, unquote, rulemaking
4 provisions at Section 28.5 of the Illinois
5 Environmental Protection Act. In an order
6 dated November 5, 2009, the Board accepted
7 this proposal for hearing. As required by
8 Section 28.5(e), the Board, within 14 days of
9 receiving the Agency's proposal, filed it for
10 first notice under the Illinois
11 Administrative Procedure Act, and the
12 proposal appeared in the Illinois Register on
13 November 20, 2009, beginning at Page 16399.
14 Today we are holding the first hearing in
15 this rulemaking. The second hearing is now
16 scheduled to take place Wednesday, January 6,
17 2010, in Chicago; and the third hearing is
18 now scheduled to take place Wednesday,
19 January 20, 2010, also in Chicago. In an
20 order dated November 5, 2009, the hearing
21 officer directed participants wishing to
22 prefile testimony for the first hearing to do
23 so on or before November 25, 2009. The Board
24 has received timely prefiled testimony from

1 Mr. Yoginder Mahajan on behalf of the IEPA,
2 and under Section 28.5(g)(1) of the Act, this
3 hearing, quote, shall be confined to
4 testimony by and questions of the Agency's
5 witnesses concerning the scope,
6 applicability, and basis of the rule, closed
7 quote. Thus we will begin this hearing with
8 that prefiled testimony by Mr. Mahajan.
9 Section 28.5(f) of the Act provides that in
10 order to expedite this hearing, the testimony
11 is accepted into the record without reading,
12 providing that Mr. Mahajan is sworn and is
13 available for questions; and certainly he is
14 present here today. After a brief
15 introduction on the part of Miss Vetterhoffer
16 for the Agency and introducing and swearing
17 in Mr. Mahajan and Mr. Kaleel, also on behalf
18 of the Agency who has indicated his
19 willingness to respond to any questions, we
20 will go right to the questions that anyone
21 present here, including the board and its
22 staff, may have for the Agency.

23 As a general matter, of
24 course, this proceeding is governed by the

1 Board's procedural rules. All information
2 that is relevant and that is not repetitious
3 or privileged will be admitted into the
4 record. Please note that questions posed
5 today by the Board or its staff are intended
6 solely to assist in developing a clear and
7 complete record for the Board's ultimate
8 decision and do not reflect any
9 predetermination about the proposal as
10 offered by the Agency.

11 As always, please, for the
12 benefit of the court reporter, please speak
13 as clearly as you're able. I don't think
14 we'll have any issues with being heard in
15 this room, but if you would refrain from
16 speaking at the same time as another person,
17 I'm sure her task will be much easier. Do we
18 have any questions about procedures before we
19 get underway? Very good.

20 Miss Vetterhoffer, you had
21 indicated that you had a brief opening
22 statement, and it appears to be time for you
23 to offer that.

24 MS. VETTERHOFFER: Thank you. Good

1 morning. I'm Dana Vetterhoffer, assistant
2 counsel on behalf of the Illinois EPA.

3 This rulemaking is intended to
4 satisfy Clean Air Act requirements regarding
5 reasonably available control technology for
6 volatile organic materials, or VOM, from
7 Group III Consumer and Commercial Product
8 Categories in areas designated as
9 nonattainment with respect to the 1997
10 eight-hour ozone national ambient air quality
11 standard. This rulemaking is in response to
12 Control Techniques Guidelines or CTGs issued
13 by the United States Environmental Protection
14 Agency in October of 2007. Illinois EPA was
15 required to submit revisions to its State
16 Implementation Plan, or SIP, in response to
17 the CTGs by October of 2008. Expeditious
18 submittal of this rule as a SIP revision is
19 necessary in order to avoid potential future
20 sanctions and enable the nonattainment areas
21 in Illinois to be redesignated to attainment
22 of the ozone standard.

23 With me today are Rob Kaleel,
24 Manager of the Air Quality Planning Section,

1 Division of Air Pollution Control, Bureau of
2 Air, and Yoginder Mahajan, Environmental
3 Protection Engineer, Air Quality Planning
4 Section, Bureau of Air at the Illinois EPA.
5 Mr. Mahajan filed prefiled testimony in this
6 rulemaking and is the Agency's main witness
7 for purposes of this hearing. Mr. Kaleel did
8 not file prefiled testimony, but rather is
9 simply available to answer questions should
10 the need arise. At this time, I'd like to
11 move that Mr. Mahajan's prefiled testimony be
12 entered into the record as an exhibit. And
13 following that, we're ready for questioning.

14 HEARING OFFICER FOX: Very good.
15 Miss Vetterhoffer, do you have a copy of that
16 testimony?

17 MS. VETTERHOFFER: I do.

18 HEARING OFFICER FOX: We can mark
19 that. And there is a gentleman who's just
20 arrived. Do you by any chance have an
21 additional copy that you might show him?

22 MR. ARMSTRONG: I actually have a
23 copy.

24 HEARING OFFICER FOX: Very good.

1 Miss Vetterhoffer has, of course, moved the
2 admission of the prefiled testimony of
3 Mr. Mahajan that, as I mentioned, was
4 prefiled on November 25 of this year. Is
5 there any objection to its admission into the
6 record of this proceeding as Exhibit No. 1?
7 Neither seeing nor hearing any,
8 Miss Vetterhoffer, it will be marked and
9 admitted as Exhibit No. 1 in this proceeding.

10 And at this point we are
11 prepared evidently for Mr. Mahajan and
12 Mr. Kaleel to take any questions. If the
13 court reporter would swear them in, we'll
14 proceed with that.

15 (Witnesses sworn.)

16 HEARING OFFICER FOX: Very good. As I
17 had noted in the opening remarks,
18 Mr. Mahajan, your testimony, on the basis of
19 its prefiling, is admitted as if it had been
20 read. So we can proceed right to any
21 questions. If there are any questions for
22 the Agency's witness, if you'd just signal
23 that you wish to be recognized, and when
24 first recognized, if you would please state

1 your name and any organization you might
2 represent that will clarify our record and
3 help us move forward. But -- Did you, sir,
4 have any questions you wish to pose before we
5 turn to questions that the board may have?

6 MR. ARMSTRONG: No. I'm just here to
7 observe.

8 HEARING OFFICER FOX: Very good. Very
9 good. I do know that the board has at least
10 some questions, and if the gentlemen from the
11 Agency are ready, I think Mr. Rao would be
12 prepared to proceed to those. Mr. Rao,
13 please go ahead.

14 MEMBER RAO: Okay. Good morning. My
15 first question relates to the compliance date
16 in Section 218.106. At Section 218.106(e),
17 the Agency proposes a compliance date of
18 May 1, 2011, for the proposed VOM
19 limitations. Could you please explain the
20 rationale for providing a potential
21 twelve-month period for the affected sources
22 to comply with the proposed limitations,
23 particularly considering that the Agency's
24 contention that these affected sources will

1 be able to comply with these limitations
2 without adding on any controlling captive
3 systems?

4 MR. MAHAJAN: When the Agency looked
5 at the -- reviewed it initially, and we found
6 out that most of the sources, they're already
7 complying with the existing regulations. And
8 those who have control, they already have
9 control enough in the sense they're already
10 meeting the average 90 percent control. So
11 with this in mind, we think there will be no
12 additional control, so they don't need a lot
13 of time to upgrade those controls if they
14 have to.

15 MEMBER RAO: Actually, my question was
16 more about, you know, is 12 months too much
17 time for coming into compliance since already
18 we are kind of running behind on this RACT
19 rules?

20 MR. KALEEL: Why not sooner, in other
21 words?

22 MEMBER RAO: Yeah.

23 MR. KALEEL: I think we anticipated a
24 little more participation on the part of

1 industry. And at the point we were drafting
2 the rule, we thought 12 months would be
3 sufficient time for people to get the word
4 that this rule was out there and they would
5 need to address it. I'm not sure that
6 there's a real driver in terms of control
7 practices that would require attention for
8 this coming ozone season. And in terms of
9 our objective to redesignate the area to
10 attainment that the compliance date in 2011
11 would not present an obstacle. But what we
12 would require or what USEPA requires is that
13 we have complete rule, a complete SIP to
14 submit to the USEPA. I don't believe they're
15 concerned about the compliance date.

16 MEMBER RAO: Okay. My second question
17 is Section 218.204, Subsection (g)(2), and
18 this is just a clarification of the units
19 that are used in this subsection. Subsection
20 (g)(2) sets forth the VOM limits for metal
21 furniture coatings. Could you please clarify
22 whether the units for solids applied is based
23 on the volume of solids as opposed to the
24 weight of the solids as used for paper

1 coating limitations?

2 MR. MAHAJAN: G is --

3 MEMBER RAO: (g)(2), Subsection
4 (g)(2).

5 MR. MAHAJAN: (g)(2) is metal
6 furniture?

7 MEMBER RAO: Yes, metal furniture
8 coating.

9 MR. MAHAJAN: This is gallons of solid
10 or liter of solid applied.

11 MEMBER RAO: Yeah. My question was do
12 you have the unit as kg per liter or pound
13 per gallon of solid supplied.

14 MR. MAHAJAN: Yes.

15 MEMBER RAO: So are we looking at the
16 volume on the -- is this unit based on the
17 volume of solids?

18 MR. MAHAJAN: Yes, volume of solid,
19 right. Yes.

20 MEMBER RAO: Okay. Because when you
21 look at the paper coatings when it --

22 MR. MAHAJAN: It used to be volume of
23 coating, now that they changed that in terms
24 of VOM gallons of solid, yes.

1 MEMBER RAO: Okay. I just wanted to
2 make sure of the units.

3 All right. In the same section
4 there is a note which says on or after May 1,
5 2011, these limitations shall not apply to
6 stencil coatings, safety-indicating coatings,
7 solid-film lubricants, electric-insulating,
8 and thermal-conducting coatings, touch-up and
9 repair coatings are coating applications
10 utilizing handheld aerosol cans.

11 My first question is are these
12 coatings that are listed in that note, are
13 they currently subject to VOM limitations?

14 MR. MAHAJAN: Looking at the existing,
15 yes, they are right now.

16 MEMBER RAO: If so, can you please
17 explain why we are excluding them from the
18 proposed rules?

19 MR. MAHAJAN: Because latest analysis
20 of the USEPA found out that for these
21 coatings, the low VOM coatings are not
22 available. So they have to use the highest
23 VOM coatings. So the USEPA is the one who
24 decided that these coatings should be exempt.

1 And there are not too many -- I mean they are
2 not -- mostly they are not very much used in
3 the industry. They are only few gallons of,
4 you know, for touch-up paints or for stencil,
5 you know, those types of things.

6 MEMBER RAO: Is that USEPA
7 determination part of the CTG?

8 MR. MAHAJAN: Yes.

9 MEMBER RAO: Okay. If this note
10 states that -- basically the note is
11 exempting these coatings from the proposed
12 limitations.

13 MR. MAHAJAN: Yes.

14 MEMBER RAO: Would it be acceptable to
15 the Agency to make it part of the rule
16 instead of leaving it as a board note which
17 doesn't have any weight in terms of enforcing
18 the rules?

19 MS. VETTERHOFFER: I guess that's
20 directed to me. Mainly I just think that for
21 consistency the rest of Subpart F seems to
22 use notes for definitions and for exclusions.
23 And so just for the sake of consistency, I
24 added that.

1 MEMBER RAO: I noticed that. And I
2 think some of these rules were written way
3 back when it was very common to use board
4 notes instead of codifying --

5 MEMBER JOHNSON: Explaining.

6 MEMBER RAO: And lately I think we
7 have heard from JCAR about making rules and
8 board notes which are not really codified
9 part of the regulations. So if you'd want to
10 take a look at it and get back to us.

11 MS. VETTERHOFFER: That would be no
12 problem making it actually part of the
13 ruling.

14 MEMBER RAO: Okay. Thank you. And my
15 last question concerns the coating
16 application methods proposed under Subsection
17 (g) (3).

18 MEMBER MOORE: Where were you now
19 again?

20 MEMBER RAO: Subsection (g) (3),
21 Section 280.204(g) (3) limits, the type of
22 coating application methods that may be used
23 for applying metal furniture coatings, and
24 also, I think, for large furniture, large

1 appliance coatings also have specified
2 methods. Could you please comment on the
3 basis for specifying that types of coating
4 applicators that must be used for applying
5 these coatings?

6 MR. MAHAJAN: Can you repeat, please.

7 MEMBER RAO: Yeah. I'm just asking
8 you to explain why you have proposed this
9 specific type of coating applicators.

10 MR. MAHAJAN: Because that's another
11 method of reducing VOM emissions from the
12 coating operation. That's one of the
13 methods. Because each application has --
14 involves percentage efficiency which is, you
15 know, how much in solid is in part to the
16 substrate. And these are the ones which
17 gives higher efficiency, like if you do that
18 spray paint, spray gun, it might give you 25
19 percent efficiency. But these type of
20 applications will give you more than 40, 60,
21 even 70, 90 percent efficiencies. So based
22 on that, that's another way of reducing VOM
23 emissions to, you know, use the higher
24 efficiency coating applications.

1 MEMBER RAO: Okay. And does this
2 limitation that you have proposed here goes
3 beyond what's recommended in the CTG?

4 MR. MAHAJAN: No. They are
5 recommended by the CTG, yes. They are not
6 beyond CTG.

7 MEMBER RAO: Because when I went
8 through the CTG, I saw that they listed all
9 these different types of applicators. But in
10 the recommendations it didn't say you have to
11 use these.

12 MR. MAHAJAN: They say they recommend,
13 yeah. When they say recommend, we take it as
14 all these are recommendations.

15 MEMBER RAO: Okay. And that goes to
16 my next question. Has the Agency reviewed
17 some of the other types of coating
18 limitations to see whether we need to specify
19 the types of application methodology other
20 than just large furniture and -- I mean large
21 appliance and metal furniture coatings.

22 MR. MAHAJAN: Right now we just worked
23 on this Group III which requires only for
24 metal furniture and large appliances based on

1 the CTG. But these are definitely, if they
2 are available to the other types, similar
3 type of operation, they can use these type of
4 application, yes.

5 MEMBER RAO: Okay. And in the
6 proposed rules you have use the HVLP, that's
7 the high volume low pressure, spray gun as a
8 benchmark for any other types that may be
9 allowed by the Agency in terms of efficiency.
10 Is that also part of the CTG that --

11 MR. MAHAJAN: Yes.

12 MEMBER RAO: -- HVLP is the --

13 MR. MAHAJAN: Yes. That's their
14 recommendation. CTG recommends that HVLP or
15 equivalent (ph.).

16 MR. RAO: Okay. And my final question
17 relating to this is you have testified
18 substantive limits on the type of application
19 under the coating limitation. Should this be
20 a separate section and like a new section in
21 the rules or -- Because when I went through
22 the coating limits, for none of the other
23 coatings we specify substandard requirements
24 in terms of how they should be applied. And

1 when I was going through these rules I ask
2 would it be more helpful to anyone reading
3 the rules to have this in a separate section
4 like you have for work practices?

5 MS. VETTERHOFFER: It could be in
6 another section. I think for some other
7 revisions we're working on right now for
8 different group we're putting them in a
9 separate section as well. So that would be
10 something we could look at.

11 MEMBER RAO: Please take a look at it
12 and see if it can be worked into another
13 section. It will make the rules more easier
14 to read.

15 That's all I have. Thanks.

16 HEARING OFFICER FOX: Very good. Did
17 any of the board members have questions or
18 follow-ups that they wish to pose?

19 MEMBER JOHNSON: Andrea probably knows
20 this, but, Rob, have you had any interest
21 from IERG or any of the industry people, or
22 they're just nonexistent up to this point?

23 MR. KALEEL: We know that they're
24 aware of it. We had made a pretty extensive

1 effort to get the word out to all the
2 industries and the associations, and we've
3 received no comments or any expression of
4 interest at all.

5 MEMBER MOORE: It's my understanding,
6 and correct me if I'm wrong, but generally
7 speaking this is not their client base.

8 MR. KALEEL: I think that's true.

9 MEMBER MOORE: They'd be more with the
10 chemical industry group, I think.

11 MR. KALEEL: Right. Although we also
12 notified the Chemical Industry Council and
13 they notified their members. And we had this
14 on our website for at least six weeks as a
15 draft before submitting it, and we received
16 no interest.

17 MEMBER JOHNSON: Okay. Well, we're
18 interested.

19 MEMBER RAO: We are always.

20 MR. KALEEL: So you have no comments.

21 HEARING OFFICER FOX: Very good. We
22 appear to have no further questions from the
23 board. We do have one gentleman in the
24 audience who I hate to single out, but

1 certainly it would be an opportunity if any
2 of the answers you've heard have triggered a
3 question to pose one if you'd like to do so.

4 MR. ARMSTRONG: No questions.

5 MEMBER JOHNSON: You're here for the
6 attorney general?

7 MR. ARMSTRONG: I am. My name is
8 Andrew Armstrong. I'm an assistant attorney
9 general, and I'm just strictly observing
10 today.

11 HEARING OFFICER FOX: A monitor?

12 MR. ARMSTRONG: Yes. Just for my own
13 personal interest more than anything.

14 HEARING OFFICER FOX: Very good, very
15 good. At this point we have reached the
16 conclusion of the remarks and responses by
17 the Agency's witnesses. If we may go off the
18 record just for a quick moment before taking
19 care of some housekeeping details, I think
20 we're on the verge of adjourning for today.

21 (Off the record.)

22 HEARING OFFICER FOX: Before
23 adjourning today, I want to take care of a
24 couple of, quote, housekeeping, unquote

1 issues. I do note that anyone may file
2 written public comments in this rulemaking,
3 and those should be filed with the clerk of
4 the board. Filings may be made through the
5 board's Clerk's Office On Line or C-O-O-L,
6 COOL. Questions concerning the process of
7 electronic filing through COOL should be
8 directed to our clerk's office which can be
9 reached through all of the contact
10 information on the Board's website. I do
11 note that filings with the board, whether
12 paper or electronic, must also be served on
13 the hearing officer and on those persons who
14 are named on the service list in this
15 proceeding. And one can always check with
16 the clerk to make sure that one has the most
17 recent version of the service list.

18 Expedited copies in this
19 fast-track rulemaking, expedited copies of
20 the transcript of this hearing, are expected
21 to be available tomorrow, December 10, 2009.
22 And very soon after the Board's clerk
23 receives that copy, the copy of the
24 transcript will be posted to the Board's

1 website where it can be viewed, downloaded,
2 and printed free of charge. I want to note
3 that under Section 28.5(f)(1), quote, within
4 seven days after the first hearing, any
5 person may request that the second hearing be
6 held, closed quote. And I do note that the
7 Board has scheduled that as required to take
8 place on January 6 of 2010. The Board's
9 procedural rules at Section 102.304(c)
10 provide that this request may be made either
11 on the record at hearing; or, secondly, in
12 writing by filing it with the board and
13 serving it upon this service list in this
14 proceeding. I stress that in a letter dated
15 November 5, 2009, the Board's acting chair,
16 Dr. G. Tanner Girard, requested that the
17 Department of Commerce and Economic
18 Opportunity, or DCEO, conduct an economic
19 impact study of this rulemaking proposal
20 filed by the Agency. The Board requested a
21 response from DCEO on or before December 15
22 of 2009. Accordingly, on behalf of the Board
23 and on its own motion, the Board does request
24 that the second hearing be held as scheduled

1 on January 26, 2010, in Chicago, both in
2 order to address DCEO's determination on that
3 request and, of course, under Section
4 28.5(f)(2) for the presentation of testimony,
5 documents, and comments by affected entities
6 and all other parties. So that hearing will
7 take place precisely as it was scheduled in
8 the hearing officer order dated November 5 of
9 2009.

10 MEMBER JOHNSON: On January 6 -- you
11 said 26.

12 HEARING OFFICER FOX: Yes. I'm sorry.
13 The hearing officer order was on November 5,
14 and the hearing will take place on January 6.
15 And I stand corrected and appreciate that
16 correction.

17 The deadline for prefiling
18 testimony under Section 28.5 of the Act falls
19 on Thursday, December 24, of 2009, based on
20 the state holiday, of course, on Christmas
21 Day, December 25.

22 Finally, if anyone has
23 questions about procedural aspects of this
24 rulemaking, they may certainly reach me

1 through the contact information that is on
2 the Board's website. Are there any other
3 matters that need to be addressed or that I
4 may have overlooked at this point in the
5 proceeding?

6 Neither seeing nor hearing any
7 comments or questions, I would like to thank
8 the Agency certainly for traveling to take
9 part in this hearing and for your testimony,
10 particularly, you, Mr. Mahajan. We will see
11 you here in Chicago on January 6 of 2010, and
12 with that we can adjourn. Thank you all.

13 (Which were all the
14 proceedings had.)

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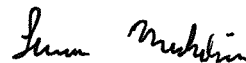
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1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.

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I, LAURA MUKAHIRN, being a Certified Shorthand Reporter doing business in the City of Chicago, Illinois, County of Cook, certify that I reported in shorthand the proceedings had at the foregoing hearing of the above-entitled cause. And I certify that the foregoing is a true and correct transcript of all my shorthand notes so taken as aforesaid and contains all the proceedings had at the said meeting of the above-entitled cause.



LAURA MUKAHIRN, CSR
CSR NO. 084-003592

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