

ILLINOIS POLLUTION CONTROL BOARD
November 20, 2003

IN THE MATTER OF:)
)
PETITION OF CROMWELL-PHOENIX,) AS 03-05
INC. FOR AN ADJUSTED STANDARD) (Adjusted Standard - Air)
FROM 35 ILL. ADM. CODE 218.204(C))

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by N.J. Melas):

Today's order grants a joint motion filed by Cromwell-Phoenix, Inc. (Cromwell) and CP-D Acquisition Company, LLC (CP-D) to reopen the docket in this matter and substitute CP-D for Cromwell as the recipient of this adjusted standard.

On November 7, 2003, Cromwell and CP-D filed a joint motion to reopen this docket (mot.) to change the name of the recipient of the adjusted standard. The motion indicates that on October 28, 2003, Cromwell created a new Illinois limited liability company named CP-D Acquisition Company, LLC, of which only Cromwell is a member. Mot. at 2. Cromwell also states that the Illinois Environmental Protection Agency (Agency) issued a lifetime operating permit (LOP) to Cromwell for the Alsip facility on November 3, 2003. *Id.* Cromwell asserts that it is prepared to merge with another company by the end of 2003 and the new operating entity will be CP-D. Cromwell asserts that on or about December 31, 2003, all of its operating assets will be transferred to CP-D, and that CP-D will accept one or more additional members. *Id.*

Cromwell moves the Board to substitute CP-D as the holder of the adjusted standard as of January 1, 2004. Mot. at 2. CP-D claims it will operate the Alsip facility in accordance with the adjusted standard and the LOP. *Id.*

Cromwell argues that the Board has granted motions to reopen the docket in the past to substitute a new party as the holder of an adjusted standard. Mot. at 3; *citing In re: Petition of the Ensign-Bickford Co. for an Adjusted Standard from 35 Ill. Adm. Code 237.102, AS 00-5 (June 5, 2003) (EBCo); In re: Petition of Commonwealth Edison Co. for an Adjusted Standard from 35 Ill. Adm. Code 302.211, AS 96-10 (Mar. 16, 2000).* Finally, Cromwell states it has discussed this motion with the attorney for the Agency in this matter, Mr. Charles Matoesian. The Board hearing officer assigned to the matter indicated the Agency will not respond to the motion.

DISCUSSION

The Board has authority to grant adjusted standards to parties who can justify such an adjustment. 415 ILCS 5/28.1(a) (2002). For regulations of general applicability such as the paper-coating rule, the Board may grant petitioners individual adjusted standards where the petitioner provides adequate proof that:

- 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;
- 2) The existence of those factors justifies an adjusted standard;
- 3) The requested 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
- 4) The adjusted standard is consistent with applicable federal law. 415 ILCS 5/28.1(c) (2002); 35 Ill. Adm. Code 104.426(a).

Cromwell sought relief from the paper-coating rule, found at 35 Ill. Adm. Code 218.204(c), for the volatile organic material (VOM) emissions created by manufacturing corrosion inhibiting packaging materials at Cromwell's Alsip facility. Cromwell provided sufficient justification and the Board granted Cromwell's petition for an adjusted standard on September 18, 2003.

The paper-coating rule requires paper coaters to utilize coating materials containing no more than 2.3 pounds of VOM per gallon of coating applied. In the alternative, pursuant to Section 218.207, a source such as a paper-coater may use a capture system and control device which achieves an 81% reduction in the overall emissions of VOM from the coating line, and a 90% reduction of the captured VOM emissions, or achieve VOM reduction that are equivalent to the limitations of Section 218.204. 35 Ill. Adm. Code 218.204, 218.207.

The adjusted standard allows Cromwell to use corrosion inhibiting solutions whose as-applied VOM contents contain a maximum of 8.3 lbs of VOM per gallon. The Board also limited the adjusted standard to apply specifically to the equipment and emission sources at the Cromwell Alsip facility that are identified in a Clean Air Act Permit Program application which Cromwell filed with the Agency on March 29, 2002.

Cromwell asserts CP-D will continue to operate the Alsip facility in accordance with the adjusted standard. Mot. at 3. The Board finds that the relevant factors required by Section 28.1 of the Act, and met by Cromwell, have not changed. Factors relating to the production of corrosion inhibiting packaging materials at the Alsip facility remain substantially different from the factors relied upon by the Board in adopting the paper-coating rule. As previously found, existence of these factors justifies an adjusted standard, the requested standard will not result in adverse health or environmental effects, and the requested standard is consistent with applicable federal law. Cromwell and CP-D request that the Board substitute CP-D as the holder of the adjusted standard effective January 1, 2004. Mot. at 2.

In the past, the Board has granted a joint motion to substitute the name of the holder of a previously granted adjusted standard. *See In re: Ensign-Bickford Co. (EBCo)*, AS 00-5 (June 5, 2003); *In re: Commonwealth Edison Co.*, AS 96-10 (Mar. 16, 2000). In *Ensign-Bickford Co.*, the original petitioner, Ensign-Bickford (EBCo), and the transferee of the adjusted standard, Dyno Nobel Inc. (Dyno Nobel), did not merge. Dyno Nobel purchased EBCo's assets and

became the new operator of the facility. The joint motion to reopen the docket and substitute Dyno Nobel for EBCo as holder of the adjusted standard included an affidavit in support of the motion by Dyno Nobel's manager of environmental affairs. The signed affidavit stated the acquisition had already occurred and that Dyno Nobel would operate the EBCo facility in substantially the same manner as EBCo.

In contrast, here Cromwell has not yet transferred the operating assets to CP-D. However, both the motion and attached affidavit, signed by the president of both Cromwell and CP-D, Francis J. Houlihan, state that as of January 1, 2004, CP-D will be the operator of the Alsip facility and will assume the obligations and liabilities arising from operating the facility. As the new operator of the Alsip facility, CP-D requests no changes to the adjusted standard other than the name substitution. The Board finds that the motion and attached affidavit of the president of CP-D provide sufficient assurance that the transfer of assets will occur by January 1, 2004. The Board notes the adjusted standard remains tailored specifically to the quantity of VOM per gallon of corrosion inhibiting solution used at the Alsip facility.

CONCLUSION

The Board reopens the docket and substitutes CP-D for Cromwell-Phoenix, Inc. as recipient of the adjusted standard in its September 18, 2003 order. The adjusted standard order, as amended today, is set forth below in its entirety and is effective as of January 1, 2004.

This supplemental opinion constitutes the Board's supplemental findings of fact and conclusions of law.

ORDER

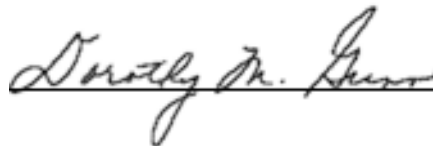
1. The Board amends the September 18, 2003 order in this matter, and grants CP-D Acquisition Company, LLC an adjusted standard from 35 Ill. Adm. Code 237.102, effective January 1, 2004. The adjusted standard applies to the equipment and emission sources at CP-D's Alsip facility located at 12701 South Ridgeway, Alsip, Cook County existing as of July 14, 2003, as identified in the Clean Air Act Permit Program permit application Cromwell-Phoenix, Inc. filed March 20, 2003.
2. The 2.3 pounds of volatile organic material (VOM) per gallon of coating applied limitation of Section 218.204(c) does not apply. Instead, CP-D is subject to the following:
 - a) The total actual VOM emissions from the entire Alsip facility must not exceed 25 tons per year;
 - b) The Versil Pak wax laminating coatings must continue to meet the applicable VOM content limitations under 35 Ill. Adm. Code 218, Subpart F;

- c) The web fed and sheet fed corrosion inhibiting (CI) coating and printing lines must use only CI solutions which, as-applied, do not exceed 8.3 lbs VOM per gallon, less water;
- d) CP-D must operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code Part 218, including but not limited to, Subpart F;
- e) CP-D must continue to investigate CI coatings with a reduced VOM content. Where practicable, CP-D must substitute current coatings with lower VOM content coatings as long as such substitution does not result in a new increase in VOM emissions. Beginning on October 1, 2004, CP-D must prepare and submit each year an annual report summarizing the activities and results of these investigatory efforts. The annual report must be submitted to the Illinois Environmental Protection Agency (Agency) Bureau of Air, Compliance, and Enforcement Section;
- f) CP-D must operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act and any other applicable regulation; and
- g) CP-D must continue to report all annual emissions the Agency in accordance with the requirements of 35 Ill. Adm. Code Part 254.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above supplemental opinion and order on November 20, 2003, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board