BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN-UP PART III	)	R04-20
AMENDMENTS TO 35 ILL.	)	(Rulemaking – Air)
ADM. CODE PARTS 211,218 AND 219	)	
	)	

PC#3

PROOF OF SERVICE

I, the undersigned, certify that I have served the attached Motion for Leave To File Post-Hearing Comments and Post-Hearing Comments of Jefferson Smurfit Corporation (U.S.) upon:

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by depositing said documents in the United States Mail, postage prepaid, in Clayton, Missouri, on July 30 2004

Roy C. Cobb, Jr.

Roy C. Cobb, Jr.

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MOTION FOR LEAVE TO FILE POST-HEARING COMMENTS

For the reasons stated below, JEFFERSON SMURFIT CORPORATION (U.S.) ("Smurfit") requests leave of the Illinois Pollution Control Board to file the attached Post-Hearing Comments in R04-20, a rulemaking to amend portions for Parts 211, 218, and 219 of Title 35 of the Illinois Administrative Code.

Smurfit first learned of the referenced rulemaking during a conference call with Illinois EPA on Wednesday June 30, 2004, to discuss settlement of a May 2003 enforcement action that relates in part to the actual ERMS ("Emission Reduction Market System") seasonal VOM emissions of Smurfit's Schaumburg, Illinois flexible packaging facility.

For background, the Schaumburg plant operates five rotogravure stations and one flexographic press that use solvent-based materials. The rotogravure stations are controlled by a thermal oxidizer, while the flexographic press is controlled by a catalytic oxidizer. When the thermal oxidizer was installed in 1989, the facility also installed field-engineered enclosures around the rotogravure stations. Illinois EPA determined that this system had 95% capture and did not require capture testing. The catalytic oxidizer was also installed in 1989. At that time, using a capture testing method that was then accepted by IEPA, the capture efficiency was determined to be 90.1%. In its subsequent reporting, including its ERMS reporting and reconciliation prior to 2003, the facility assumed 95% capture for the rotogravure stations and 90.1% capture for the flexographic press. These were also the capture efficiencies used to determine the facility's baseline ERMS emissions.

In September and early October 2002 and February 2003, because it was advised by outside test experts that capture testing using a temporary total enclosure was impracticable, an outside firm performed capture testing on the rotogravure stations and the flexographic press using a protocol approved by U.S. EPA and Illinois EPA. The protocol tracked the alternative procedures proposed to be expressly incorporated into the Illinois VOM rules in R04-20.

After conducting the tests – which were extremely costly and presented difficulties because of the reactive nature of the materials used by the plant – it was determined that three of the rotogravure units had a capture efficiency of 94.4%, with a Data Quality Objective ("DQO") of 3.57. It is our current understanding that, after much resistance, Illinois EPA will accept this result as establishing the capture efficiency that can be used to calculate ERMS seasonal

emissions from these three stations. For the other two rotogravure stations, the capture efficiency measured during six test runs has ranged from 99.9% to 122.6%, with an overall average of 111.1%. Because the results have been so high (individual runs greater than 105%), this testing has been rejected. Moreover, it is Illinois EPA's position that in the absence of a test that either uses a temporary total enclosure or meets the DQO (in the absence of a total enclosure), the Illinois rules require that capture efficiency must be deemed to be zero in calculating ERMS seasonal emissions.

For the flexographic press, capture testing in October 2002 showed an average capture of 95.4% with a DQO of 7.35 and lower confidence limit ("LCL") of 92.3%. Illinois EPA has asserted that U.S. EPA guidance mandates that the LCL cannot be used in determining a facility's ERMS seasonal emissions, and that here again, strict application of the Illinois rules would require that the capture efficiency for calculating ERMS seasonal emissions be zero.

In the June 30 discussion with Illinois EPA, in response to questioning about what in the ERMS rulemaking supported the agency's position, the agency indicated that its position would be incorporated into the rules by a pending rulemaking that was through the public comment period and was awaiting the Board's decision. In the follow-up to this discussion, we found information about the R04-20 rulemaking on the Board's website.

We note that there was nothing in Illinois EPA's initial rulemaking petition that would have alerted Smurfit, other regulated entities, or the public, that the proposed rule was intended to have such a significant impact on sources subject to ERMS. In the petition, the agency declared that:

> "The proposed amendments are simply a 'clean-up' of existing regulations which result from discussions with the USEPA and industry and which will reduce the burden of complying with certain provisions and increase the flexibility for complying with certain other provisions."

The agency's synopsis of the proposal continued, in part: "Because the changes were not substantive, no technical support documents or written testimony are provided. ... Any impacts that might occur as a result of the proposed changes will benefit the users without adverse economic or environmental impacts. ..."

This characterization of the proposal by Illinois EPA explains why we received no alert from the various business groups we belong to and work with about the pending rulemaking. We also believe that we have acted with reasonable promptness after learning of the rulemaking and that our Schaumburg facility's circumstances will help to provide the Board with a concrete example of the application of the capture efficiency testing portion of the rulemaking that will assist its deliberations. The Schaumburg example demonstrates a situation where the proposed changes, depending upon the language adopted by the Board, can have a clearly substantive impact on the rights of regulated entities.

Smurfit therefore respectfully request that the Board accept and consider the attached comments prior to its First Notice.

Respectfully submitted,

Jefferson Smurfit Corporation (U.S.)

By Roy C. Cobb, Jr.

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Dated: July 30, 2004

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POST-HEARING COMMENTS OF JEFFERSON SMURFIT CORPORATION (U.S.)

For the reasons stated in the attached Motion for Leave To File Post-Hearing Comments, Jefferson Smurfit Corporation (U.S.) ("Smurfit") is submitting these comments after the close of the pre-first notice public comment period for Rulemaking R04-20.

BACKGROUND

Smurfit and its affiliates operate 20 industrial facilities in Illinois, including two facilities in the Chicago area – a folding carton plant in Carol Stream and a flexible packaging plant in Schaumburg – that use solvent-based printing and coating materials and control devices to reduce emissions of volatile organic material ("VOM"). As a result, Smurfit is directly affected by the capture-efficiency testing portion of the proposed rulemaking. These comments are directed solely to this portion of the rulemaking.

The Carol Stream folding carton plant, in addition to other equipment, operates two solvent-based eight-station rotogravure presses, each controlled by a separate thermal oxidizer. The Carol Stream plant did capture testing using a temporary total enclosure in 1995.

The Schaumburg plant operates five rotogravure stations and one flexographic press that use solvent-based materials. The rotogravure stations at the Schaumburg plant are controlled by a thermal oxidizer, while the flexographic press is controlled by a catalytic oxidizer. When the Schaumburg thermal oxidizer was installed in 1989, the facility also installed field-engineered enclosures around the rotogravure stations. At that time, Illinois EPA determined that this system had 95% capture and did not require capture testing. The catalytic oxidizer was also installed in 1989. At that time, using a capture testing protocol that was then accepted by IEPA, the capture efficiency was determined to be 90.1%. In its subsequent reporting, including its ERMS ("Emission Reduction Market System") reporting and reconciliation prior to 2003, the Schaumburg facility assumed 95% capture for the rotogravure stations and 90.1% capture for the flexographic press. These were also the capture efficiencies used to determine the facility's baseline ERMS emissions.

In 2002, since the Schaumburg flexible packaging plant had not performed capture testing using one of the methods expressly approved by U.S. EPA, it was directed to do capture testing by

U.S. EPA. At that time, Smurfit was advised by outside test experts that visited the plant that capture testing using a temporary total enclosure was impracticable. Smurfit then obtained U.S. EPA's and Illinois EPA's approval of a test protocol that determined capture efficiency by weighing and analyzing the materials used compared to the gaseous VOM in the oxidizer inlet. The protocol used the measurement and analytical techniques in the alternative procedures that would be expressly incorporated into the Illinois VOM rules if the proposed rulemaking R04-20 is finally adopted.

In September 2002 and February 2003, an outside firm performed capture testing on the rotogravure stations using the approved protocol. After conducting the tests – which were extremely costly and presented difficulties because of the reactive nature of the materials used by the plant – it was determined that three of the rotogravure units had a capture efficiency of 94.4%, with a Data Quality Objective ("DQO") of 3.57. For the other two rotogravure stations, the capture efficiency measured during six test runs ranged from 99.9% to 122.6%, with an overall average of 111.1%. Under U.S. EPA guidance, test runs with capture efficiency greater than 105% (four of the six runs) cannot be used. Illinois EPA has rejected this testing. Moreover, despite the overwhelming engineering and test evidence supporting that the units have a very high capture efficiency, and Illinois EPA's prior engineering judgment that the capture efficiency was 95%, the agency has taken the position that in the absence of a test that either uses a temporary total enclosure or meets the DQO (in the absence of a total enclosure), the Illinois rules – at least as interpreted by the agency – require that capture efficiency must be deemed to be zero in calculating ERMS seasonal emissions. Smurfit understands that Illinois EPA believes that the current rulemaking will codify its interpretation.

For the flexographic press, capture testing in October 2002 showed an average capture of 95.4% with a DQO of 7.35 and lower confidence limit ("LCL") of 92.3%. Illinois EPA has asserted that U.S. EPA guidance mandates that the LCL cannot be used in determining a facility's ERMS seasonal emissions, and that here again, strict application of the existing Illinois rules would require that the capture efficiency for calculating ERMS seasonal emissions be zero. And again, Illinois EPA apparently believes that the current rulemaking will codify this interpretation of the existing rules.

In May 2003, Smurfit received an NOV from Illinois EPA that alleged a number of violations, a portion of which related to whether the Schaumburg plant had accurately calculated its seasonal ERMS emissions from 2000 on. Smurfit first learned that there was a rulemaking proceeding that might impact the use of capture efficiency testing in a June 30 conference call with Illinois EPA. In the follow-up to this discussion, we found information about the R04-20 rulemaking on the Board's website.

CAPTURE EFFICIENCY TESTING PROPOSAL

Illinois EPA's Statement of Reasons in its initial rulemaking submittal for R04-20 declared that:

> "The proposed amendments are simply a 'clean-up' of existing regulations which result from discussions with the USEPA and industry and which will reduce the burden of complying with certain provisions and increase the flexibility for complying with certain other provisions."

The agency's synopsis of the proposal continued, in part: "Because the changes were not substantive, no technical support documents or written testimony are provided. ... Any impacts that might occur as a result of the proposed changes will benefit the users without adverse economic or environmental impacts. ..."

Similarly, the Board's January 22, 2004 order accepting the rulemaking proposal stated:

> "... The Agency describes its proposed amendments as non-substantive corrections and updates.
>
> "...
>
> "... The Agency describes the proposed amendments as non-substantive corrections and updates; 'simply a "clean-up"' that will 'reduce the burden' of, and 'increase the flexibility' in, demonstrating compliance. ..."

A major part of the Agency's capture efficiency testing proposal does in fact match this description. Smurfit strongly supports amending the Illinois rules to allow full use of all capture efficiency test protocols and methods already approved by U.S. EPA and to provide the maximum possible flexibility for Illinois EPA to approve alternative methods of measuring capture efficiency. However, as indicated below, Smurfit believes that certain aspects of the Agency's proposed changes and supporting testimony are inappropriate and might have a substantial adverse impact on regulated facilities.

U.S. EPA Guidance

One of the documents Illinois EPA has relied upon to support its proposal is U.S. EPA's January 9, 1995 "Guidelines for Determining Capture Efficiency" ("Guidelines"). The Guidelines describe U.S. EPA's recommended protocols for testing capture efficiency using total enclosures. As Illinois EPA has indicated, the Guidelines also include "alternative" protocols for capture testing without a total enclosure if the collected data meets either one of two statistical tests.

The first statistical test – the "Data Quality Objective" ("DQO") – requires that both the upper and lower 95% confidence limits (as determined by the two-sided t-value) be within 0.95 and 1.05 times the measured average capture efficiency. A capture efficiency test meeting the DQO

can be used for all purposes, including demonstrating noncompliance (if the measured DQO capture efficiency is less than that required by the applicable rule or permit condition) and establishing emission credits. One serious drawback of the DQO approach, which is illustrated by what happened at our Schaumburg plant, is that it is difficult to obtain a series of three runs that meets U.S. EPA's specified DQO of 5. As a result, two or more rounds of testing are likely to be required. These tests are extremely costly and impose a serious burden on affected facilities.[1]

The second statistical test – the "Lower Confidence Limit" ("LCL") – can be used where the measured capture efficiency does not meet the DQO. As the name suggests, it is used not to establish the capture efficiency for the tested emission units, but to establish a lower bound that is likely below the actual capture efficiency. As U.S. EPA indicates, it is analogous to sources using a screening model for assessing air quality impacts. The screening model likely over-estimates the actual impacts, but if the screening model indicates no problem, the source can avoid use of more complex models. As described by U.S. EPA (pp. 15-16):

> "The purpose of the LCL approach is to provide sources, who may be performing much better than their applicable regulatory requirement, a screening option by which they can demonstrate compliance. The approach uses less precise methods and avoids additional test runs which might otherwise be needed to meet the DQO while still being assured of correctly demonstrating compliance. It is designed to reduce 'false positives' or so called 'Type II errors' which may erroneously indicate compliance where more variable test methods are employed. Because it encourages CE performance greater than that required in exchange for reduced compliance demonstration burden, the sources that successfully use the LCL approach could produce emission reductions beyond allowable emissions. Thus, it could provide additional benefits to the environment as well."

In addition to other general requirements, U.S. EPA has imposed two significant restrictions on the use of the LCL by facilities that have highly effective capture systems, namely, any runs greater than 105% are considered invalid (this restriction also applies to the DQO); and the LCL cannot be used if the average measured capture efficiency is greater than 100% (this limitation does not apply to the DQO).

John Seitz's February 7, 1995 transmittal memo for the Guidelines contains the following statements:

> "For the purpose of CE [capture efficiency] testing to determine compliance with VOC Reasonably Available Control Technology (RACT) requirements, any of the CE testing methods described in the attached document [which includes the LCL] are acceptable to EPA. ... The LCL should not be used, however, for enforcement purposes to confirm noncompliance; sufficient test runs should be run to meet the DQO protocol.
>
> "...

[1] The cost of performing such multiple rounds of testing is further increased by U.S. EPA-Region V's current position that each capture test run must extend for at least three hours.

"In those situations where CE testing is done to determine emission reductions for the purpose of establishing emission credits for offsets, shutdowns, and trading, the LCL method is not appropriate for these applications. ..."

Smurfit submits that the reason for these stated limitations on the LCL is quite clear – the LCL is the "lower confidence limit," a capture efficiency that is a multiple of the standard deviation below the average measured value. In other words, there is little likelihood that the actual capture efficiency is lower than the LCL and a very significant likelihood that it is higher. Since the LCL is the lower bound for capture efficiency, by definition, an LCL higher than the required capture efficiency demonstrates compliance, but an LCL lower than the required capture efficiency does not demonstrate non-compliance. Similarly, Smurfit believes the meaning of the last quoted sentence in the Seitz memo is to advise that the baseline emissions for determining emission credits should not be based on the LCL since this would overstate the baseline emissions and therefore give the facility emission credits above what it should obtain. To take a concrete example, in determining a facility's ERMS baseline, it would be inappropriate to use the LCL capture efficiency – without additional facts indicating that LCL corresponded to the actual capture efficiency. However, once the baseline has been established, there is no reason why the facility should not be able to use the LCL capture efficiency to determine its actual ERMS seasonal emissions, especially since use of the LCL capture efficiency will overstate the VOM emissions that must be accounted for.

Record in R04-20

The testimony of the Illinois EPA witnesses in the two hearings is less than clear in some respects, especially relating to the acceptable uses of the LCL and DQO. For example, the witnesses appear to have made contradictory statements as to the use of an LCL capture efficiency in an enforcement proceeding. We believe the clearly correct result – which is what U.S. EPA states in its guidance document – is that the LCL can be used to demonstrate compliance, but not non-compliance. The Board should note that the application of a statistical test to stack testing results is not the norm. For example, neither U.S. EPA nor Illinois EPA requires in other situations that stack test results have extremely limited "scatter" in order to be valid. Moreover, as stated above, the reason why the LCL can be used to demonstrate compliance, but not non-compliance, with capture efficiency requirements is that the LCL is the "lower confidence limit," i.e., the expected actual value is very likely to be higher. If the calculated LCL is above the required capture efficiency, this is sufficient to demonstrate compliance. The fact that it is below the required capture efficiency does not demonstrate non-compliance because the LCL is merely the lower bound for capture efficiency.[2]

[2] At the first hearing, Smurfit believes the Hearing Officer correctly questioned whether parts of Illinois EPA's proposal addressed evidentiary standards. Smurfit believes that what constitutes "credible evidence" of compliance or a violation should not be addressed in this rulemaking. In certain circumstances, for example, if there were three or more valid test runs, all of which were below the required capture efficiency, the results might provide some credible evidence of a violation even though the DQO was not met. Similarly, depending upon the precise circumstances, an LCL lower than the required capture efficiency might provide credible evidence of compliance. Some of the other testimony also goes to matters beyond the scope of this rulemaking. An example is the testimony in the May 6 hearing (Transcript, pp. 18-19) that in enforcement proceedings the burden is on the source to demonstrate compliance. This would be a reversal of the normal burden of proof and certainly should not be the basis for accepting the DQO language proposed by Illinois EPA.

Smurfit believes that the agency testimony also indicates some misunderstanding about the use of t-values in the calculation of the DQO and the LCL. It is not the case that a series of capture test runs that meets the DQO is more accurate than the LCL. Instead, the DQO is a measure of the size of the standard deviation in the results of the test runs. The DQO is intended to ensure that the 95% upper and lower confidence limits are within 5% of the measured average capture efficiency. It thus relates to how tightly clustered the measured capture efficiencies are. U.S. EPA's DQO test requires that the standard deviation for the measured capture efficiencies multiplied by the two-sided 95% t-value for the number of runs and divided by the square root of the number of runs must be no greater than 5% of the measured average capture efficiency. Effectively, this means that to pass the DQO in three runs, the upper and lower 95% confidence limits must be within about 2% of the average measured capture efficiency. For example, if the average measured capture efficiency were 75%, the 95% upper and lower confidence limits would have to be within the range from 73.5 to 76.5%. As the number of valid test runs increases, the allowed spread for the 95% confidence limits also increases, so that for six runs it is almost 5% of the measured average. (Taking again 75% as the average measured capture efficiency, the 95% confidence limits would have to be within 71.3 to 78.7%.) For nine runs, the allowed spread is 6 1/2 %. (For 75% capture, the range for the 95% confidence limits would be 70.1 to 79.9%.)

As an example of how the two methods apply to a specific situation, in the September 2002 testing at Smurfit's Schaumburg facility, the measured capture efficiencies for the three runs were 105.4%; 99.9%, and 103.6%. Because the 105.4% was deemed to exceed 105% maximum in the U.S. EPA Guidelines, it was not considered valid by Illinois EPA.[3] Moreover, for the LCL to apply, the average measured capture efficiency must be less than 100%. For sake of example, the following would be the DQO and LCL if the results of the first run had been 95.4% rather than 105.4%. With this change, the average capture efficiency measured in the three runs would be 99.6% with a standard deviation of 4.16. However, the DQO statistic would be 10.25 so the three runs would not meet the DQO, despite what would appear to be a relatively tight spread – 95.4, 99.9, and 103.6. For this hypothetical data set, the LCL would be 95.1%. Because of the inherent variability in both stack parameters and test methods, by having the 105% cut-off on valid data, both alternative methods are inherently stacked against equipment that has close to 100% capture without being in a permanent enclosure that meets U.S. EPA's total enclosure specifications.

Taking as a second example a situation in which the capture efficiency is significantly less than 100%, assume a facility had three test runs that were 75%, 80%, and 70%. The average capture efficiency would be 75%. The DQO would be 16.56 and the LCL would be 69.6%. Even assuming an extremely tight spread – 75%, 77.5%, and 72.5% -- the DQO would be 8.28 – still above the 5.0 specified in U.S. EPA's Guidelines – while the LCL would be 72.3%. This illustrates that a source is highly unlikely to meet the required DQO in one set of three runs

[3] If the 105.4 were not excluded, the average capture efficiency of the three runs would be 103.0. Even though the spread of the three runs – ranging from 99.9 to 105.4 – is tight, the DQO would be 6.763. The LCL (assuming it could be used when the average exceeds 100%) would be 99.9%.

Illinois EPA's proposed rule language speaks of requiring either DQO or total enclosure testing for "establishing" credits for offsets, shutdowns, and trading, which in terms of establishing an emission baseline, is consistent with the meaning of LCL. However, Illinois EPA's position outside the rulemaking is that their proposed language would prohibit a facility's using the LCL to determine its actual seasonal emissions. While we do not believe that a plain reading of the proposed language supports this position, such possible misinterpretations support the recommendation of the Illinois Environmental Regulatory Group ("IERG") and Smurfit (see below) that most of the proposed language relating to the use of the DQO and LCL be deleted from whatever rule the Board adopts.

Requested Action

Smurfit strongly supports giving Illinois EPA and facilities in Illinois the widest possible range of methods to demonstrate capture efficiency without case-by-case SIP revisions. Smurfit agrees substantially with the comments submitted by IERG relating to the capture efficiency changes proposed in R04-20, although, as indicated below, it is recommending somewhat different language for inclusion in the proposed rule. Smurfit also submits that Illinois EPA's proposed language, which would require a successful DQO test to demonstrate compliance in enforcement actions, is wrong and should not be adopted.

Smurfit believes that the appropriate language for the Board to adopt in Section 218.105(c)(2) (with equivalent language in Section 219.105(c)(2)) would be the following. Changes from Illinois EPA's proposal in the Errata Sheet, Hearing Exhibit 2, are shown by ~~strikethrough~~ to show deletions and underlining to show additions.

> The capture efficiency of an emission unit shall be measured using one of the protocols ~~given~~referenced below. Appropriate test methods to be utilized in each of the capture efficiency protocols are described in Appendix M of 40 CFR 51 and in USEPA's "Guidelines for Determining Capture Efficiency" incorporated by reference at Section 218.112. ~~Any error margin associated with a test method or protocol may not be incorporated into the results of a capture efficiency test.~~ If these techniques are not suitable for a particular process or equipment configuration, ~~then~~ an alternative capture efficiency protocol may be used, pursuant to the provisions of 218.108(b) of this Part. For purposes of determining capture efficiency using a ~~an alternative~~ protocol in USEPA's "Guidelines for Determining Capture Efficiency," but not in Appendix M to 40 CFR Part 51, sources shall satisfy the data quality objective (DQO) or the lower confidence ~~level~~ limit (LCL) statistical analysis methodologies as presented in USEPA's "Guidelines for Determining Capture Efficiency." ~~incorporated by reference at Section 218.112 of this Part~~. LCL can be used to establish compliance with capture efficiency requirements. ~~For purposes of establishing emission credits for offsets, shutdowns, trading, and compliance demonstrations arising in enforcement matters, the DQO must be satisfied.~~

Smurfit's purpose in suggesting these changes is:

1. To place the U.S. EPA-endorsed capture-testing protocols that do not use a temporary or permanent total enclosure on equal footing with those protocols that do use such an enclosure. There should be no burden on a facility to prove that a temporary or permanent total enclosure is "unsuitable" before it can use another approved method. This is especially true for those facilities that are only required to achieve 60% or 65% overall control and, hence, generally only need to show a capture efficiency of around 70%, or even less. These facilities should be able to freely use the LCL to demonstrate compliance.

2. To eliminate statements relating to when a particular test method can and cannot be used. Smurfit believes that such statements would go beyond the announced scope of this rulemaking, which is to incorporate those protocols already approved by U.S. EPA into the Illinois rules by reference. Moreover, such statements, unless they are carefully worked out, would be subject to possible misinterpretation – as evidenced by Smurfit's experience at Schaumburg. To apply this to the fullest extent, the statement that the LCL can be used to demonstrate compliance would also be deleted; however, Smurfit recommends retaining this sentence to eliminate the apparent confusion about this issue.

Smurfit respectfully requests that the Board accept and consider these comments prior to its First Notice and that any proposed rule language adopted by the Board be revised to be consistent with these comments.

Respectfully submitted,

Jefferson Smurfit Corporation (U.S.)

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Dated: July 30, 2004