

ILLINOIS POLLUTION CONTROL BOARD  
August 15, 1996

FREDERICK COOPER LAMPS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-158
	)	(Permit Appeal - Air)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

This matter is before the Board on a motion for summary judgment filed by petitioner Frederick Cooper Lamps (FCL) on June 14, 1996. FCL seeks summary judgment on its March 5, 1996 petition for review, wherein FCL sought review of a December 6, 1995 determination by the Illinois Environmental Protection Agency (Agency) which denied FCL's application for a permit to construct and operate a clear lacquer applicator and a curing oven. The motion for summary judgment was accompanied by a joint motion for expedited consideration. On June 27, 1996, the Agency filed a response to the motion for summary judgment, asking that the Board deny FCL's motion for summary judgment and dismiss the petition for review.

In the joint motion for expedited consideration, the parties state that the sole remaining issue in this case is whether the Agency correctly applied the metal furniture coating standard at 35 Ill. Adm. Code 218.204(g) to FCL's clear coating operations, or whether the Agency should have instead applied the standard for miscellaneous metal parts and products found at 35 Ill. Adm. Code 218.204(j)(1). The parties state that resolution of this issue will therefore resolve the permit appeal.

Summary judgment is appropriate where there are no genuine issues of material fact to be considered by the trier of fact and the movant is entitled to judgment as a matter of law. (Waste Management of Illinois, Inc. v. IEPA (July 21, 1994) PCB 94-153; ESG Watts v. IEPA (August 13, 1992), PCB 92-54; Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; Williams Adhesives, Inc. v. IEPA (August 22, 1991), PCB 91-112.) Because there are no remaining genuine issues of material fact, we find that summary judgment is appropriate. For the reasons set forth below, we deny FCL's motion for summary judgment and grant summary judgment in favor of the Agency.

BACKGROUND

FCL is a manufacturer of residential lamps and “residential electric lighting fixtures,” located at 2545 W. Diversey Avenue in Chicago, Illinois. FCL has been at this location since 1969, and has operated in Chicago since 1922. FCL currently employs approximately 175 people. As part of its operations, FCL applies surface coatings containing volatile organic material (VOM) to a variety of substrates. The emissions at issue in the current appeal concern the application of clear lacquer to brass and brass-plated zinc castings. The clear lacquer is applied via spraying, and the coated pieces are cured in a curing oven. The pieces are then assembled into a variety of residential lighting fixtures.

FCL submitted an application for a joint construction and operating permit for its clear coating applicator and curing oven, which was received by the Agency on November 6, 1995. (Ag. Rec. at 002.) The Agency denied FCL’s application by letter dated December 6, 1995. The construction permit was denied because the equipment was constructed prior to issuance of the requested permit. (Ag. Rec. Correspondence at 001.) The operating permit was denied on the grounds that the clear metal lacquer failed to meet the VOM content for Metal Furniture Coating at 35 Ill. Adm. Code 218.204(g). (Ag. Rec. Correspondence at 002.) Additionally, the December 6, 1995 denial letter states that FCL failed to demonstrate compliance with “Subpart F: Coating Operations” by failing to submit applicable coating analysis test methods and procedures specified in Section 218.105(a); and failing to submit recordkeeping and reporting requirements as specified in Section 218.211(c). (Id.)

Section 211.3710 defines metal furniture as:

[A] furniture piece including, but not limited to, tables chairs, waste baskets, beds, desks, locker, benches, shelving, file cabinets, lamps, and room dividers made in whole or in part of metal.

(35 Ill. Adm. Code 211.3710 (emphasis added).)

“Metal furniture coating” is defined at Section 211.3730, to include:

[A]ny protective, decorative or functional coating applied onto the surface of any metal furniture or any metal part which will be assembled with other metal, wood, fabric, plastic or glass parts to form metal furniture. . . .

(35 Ill. Adm. Code 211.3730.)

Since March 15, 1996, the standard applicable to metal furniture baked coatings pursuant to 35 Ill. Adm. Code 218.204(g) has been 2.3 lb./gal. The clear lacquer used by FCL has a VOM content of approximately 3.02 lb./gal. (based on formulation data) or 3.45 lb./gal. (based on 40 CFR Part 60, Method 24 analysis.) The parties agree that there is no clear coating available which would enable FCL to comply with the 2.3 lb./gal. standard.

In its motion for summary judgment, FCL argues that the Agency should have applied the limitations for miscellaneous metal parts and products found at 35 Ill. Adm. Code 218.204(j) to its clear coating operations, rather than the standards for metal furniture found at 35 Ill. Adm. Code 218.204(g). For purposes of the limitations set forth in 35 Ill. Adm. Code 218, miscellaneous metal parts and products coating is defined as:

any protective, decorative or functional coating applied onto the surface of any metal part or metal product, even if attached to or combined with a nonmetal part or product;

\* \* \* \*

b) but not including the following coatings which are subject to separate regulations: can coatings, coil coatings, metal furniture coatings, . . . .

(35 Ill. Adm. Code 211.3850 (emphasis added).)

Miscellaneous metal parts and products are defined at 35 Ill. Adm. Code 211.3830, which provides:

“Miscellaneous metal parts and products” for the purposes of 35 Ill. Adm. Code 215.Subpart F, shall include farm machinery, garden 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 (SIC) 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 thirty-five vehicles per day.

(35 Ill. Adm. Code 211.3830.)

As both parties have stated, the miscellaneous metal parts category is a “catch-all” category defined by exclusion, and one of the specific categories excluded is metal furniture. Therefore, a product can only be a miscellaneous metal part if it is not metal furniture. As described above, metal furniture is specifically defined to include lamps. Thus, if the products FCL manufactures are lamps within the meaning of 35 Ill. Adm. Code 211.3710, then they are metal furniture, and not miscellaneous metal parts. Conversely, if FCL’s products are not metal furniture, they would fall into the catch-all category of miscellaneous metal parts and products.

FCL attacks the Agency’s determination that its clear coating of brass and brass-plated zinc castings constitutes metal furniture coating in two different ways: First, FCL argues that its process is not metal furniture coating, since the rules for metal furniture coating do not include a clear coating limitation. Second, FCL argues that the definition of metal furniture necessarily requires defining “lamp” in a narrow fashion, and that its products are not “lamps” within the meaning of that narrow definition.

### FCL's Assertion That Metal Furniture Coating Does Not Include Clear Coating

In support of its contention that metal furniture coating does not include the clear coating of its brass and brass-plated fixtures, FCL argues that the standard for metal furniture coating does not cover clear coat applications. The limitations for metal furniture coating contain limits based on air-dried or baked coatings, and FCL asserts that they only apply to colored coatings. (Petitioner's Memorandum in Support of Motion for Summary Judgment (Pet. Mem.) at 6-8.) FCL asserts that, unlike the regulations for miscellaneous parts and products, the regulations for metal furniture coating do not contain a limitation specifically applicable to clear coats. FCL asserts that the "obvious" reason for this is that the Metal Furniture Coating standard does not cover clear coat operations such as its coating of brass and brass-plated zinc castings. (Pet. Mem. at 6.)

FCL also asserts that the coating limitations in Section 218.204 are intended to constitute reasonably available control technology (RACT). RACT is defined as "the lowest emission limitation that an emission unit is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." (35 Ill. Adm. Code 211.5370.) FCL asserts that, since there are no clear coats available for its operations with a VOM content less than the metal furniture standard, that standard cannot be RACT for its operations. (Pet. Mem. at 7.)

FCL also points to the Control Technology Guidance (CTG) issued by the United States Environmental Protection Agency (USEPA) for Metal Furniture Coating. FCL asserts that the CTG only contemplates the use of colored coatings, since it classifies facilities on the number of colors they can run at one time. FCL points out that the CTG does not specifically include facilities applying clear coats in its discussions. FCL asserts that common sense shows that clear coat operations are subject to the clear coat limitations for Miscellaneous Metal Parts and Products, rather than the limitations for Metal Furniture. (Pet. Mem. at 7-8.)

The Agency asserts that the requirements of 35 Ill. Adm. Code 218.204(g) for metal furniture coating apply to FCL's clear coating operations since this rule applies generally to all metal furniture coaters. The Agency asserts that, unlike other industry types, the requirements applicable to metal furniture coaters are not separated into different classes by type of coating. (Agency's Response in Opposition to Petitioner's Motion for Summary Judgment (Ag. Res.) at 6.) Rather, the limitations are based on the type of process; whether the coatings are air-dried or baked. The Agency asserts that the coating rules set forth in Part 218 are inherently substrate specific, and that the metal furniture requirements are not coating specific. (Ag. Res. at 12.)

The Agency asserts that its position is supported by the CTG issued by USEPA. The Agency asserts that the CTG does not offer any support for excluding clear coatings from the RACT requirements. (Ag. Res. at 9.) The Agency points out that the CTG contemplates not only the use of low VOM coatings as a control option, but also the use of higher solids or water-based coatings, and the use of conventional control technologies, including carbon adsorption, and catalytic and non-catalytic combustion. (Ag. Res. at 11-12.) The Agency asserts that the CTG makes clear that the RACT requirements for the metal furniture industry

are meant to apply to “any and all” surface coatings to metal furniture or metal parts assembled into metal furniture. (Ag. Res. at 12.)

### FCL’s Assertion That Its Coating Is Not Metal Furniture Coating

FCL also asserts that it is not appropriate to characterize its brass and brass-plated zinc castings as metal furniture. While the definition of metal furniture includes the term “lamps,” FCL asserts that its “residential electric lighting fixtures” are not lamps as that term is used in the definition of metal furniture. (Pet. Mem. at 8-9.) In support of this, FCL argues that all of the products specifically listed in the definition of metal furniture are products coated with colored, rather than clear, coatings. (Pet. Mem. at 9.) In this context, and in the context of the CTG’s asserted failure to address clear coats, FCL asserts that the term lamp must refer only to those metal lamps which are capable of being coated with colored coatings.

FCL asserts that, besides the CTG, other USEPA documents show that its products are not metal furniture. FCL asserts that the New Source Performance Standards (NSPS) for the surface coating of metal furniture defines the metal furniture industry by SIC code, and that the SIC code for its clear coating operations are not included in the list. Furthermore, FCL argues that the USEPA document “Documentation for Developing the Initial Source Category List,” prepared for use in the development of a maximum achievable control technology (MACT) standard, omits any reference to lamps.

In response to FCL’s assertions that its “residential electric lighting fixtures” are not lamps and that the definition was intended to exclude products under SIC code Major Group 36, the Agency points out that the metal furniture regulations, as well as the CTG, do not rely on SIC codes. The Agency asserts that an SIC code analysis does not belong within the existing RACT framework for metal furniture. (Ag. Res. at 13-14.) Furthermore, the Agency states that almost all lamps, including residential, commercial, and industrial electric lighting fixtures, are classified under SIC code Major Group 36. The Agency states that FCL’s construction would therefore render the term “lamps” meaningless within the Part 211 definition. (Ag. Res. at 21.)

In its reply, FCL also points out that the Agency had treated a similar manufacturer of brass lamps as subject to the limitations for miscellaneous metal parts manufacturers.<sup>1</sup> (Reply Br. at 4.) FCL reasserts its position that the regulations that are intended to apply to clear coat operations list separate emissions for clear coating operations, since clear coats must be treated differently because of their VOM content. (Reply Br. at 5.) FCL also disputes the Agency’s assertion that defining lamps so as to exclude its products would necessarily exclude all lamps from regulation. FCL asserts that lamps that fall within the category of “metal household

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<sup>1</sup> FCL refers to the Stiffel Company, which has an adjusted standard petition pending before the Board, docketed as In the Matter of Petition of Stiffel Company for Adjusted Standard from 35 Ill. Adm. Code Part 218 Subpart F, AS 92-1. (See Reply Br. Exhibit A.) We note that the record in that matter has not been made a part of this proceeding. We also note that further proceedings in AS 92-1 have been stayed pending a determination in the case at bar. (See July 2, 1996 Joint Status Report filed in AS 92-1.)

furniture” (SIC code 2514) and “office furniture, except wood” (SIC code 2522) would still be considered metal furniture. (Reply Br. at 6-7.)

## DISCUSSION

In determining whether to apply the metal furniture standard or the miscellaneous metal parts standard, we note that, as the parties have both stated, the miscellaneous metal parts category is a catch-all category defined by exclusion, and one of the specific categories excluded is metal furniture. Therefore, a product can only be a miscellaneous metal part if it is not metal furniture. Metal furniture is specifically defined to include lamps. Thus, if the products FCL manufactures are “lamps” within the meaning of 35 Ill. Adm. Code 211.3710, then they are metal furniture, and not miscellaneous metal parts. Conversely, if FCL’s products are not metal furniture, they would fall into the catch-all category of miscellaneous metal parts and products.

We disagree with FCL’s assertion that because the metal furniture rules do not specifically address clear coating, they do not apply to the clear coating of metal furniture, or that metal furniture coating must necessarily exclude clear coating. The metal furniture coating rules establish limitations based on the method of drying: whether the coating is air-dried or oven-dried. These categories include within their terms the application of clear coats to metal furniture, whether air-dried or oven-dried. As FCL has stated, its clear coats are oven-dried. In fact, the permit which is the subject of this appeal is for the construction and operation of a drying oven for FCL’s clear coating lines. As the Agency has stated, the metal furniture coating limitations are substrate specific, not coating specific. Because the metal coating rules do not refer to either colored or clear coating as separate categories, their terms apply equally to both, and no distinction can be made on this basis. Similarly, while the CTG does not specifically address the application of clear coats, its terms could apply equally well to clear coats.

Similarly, we find that FCL’s attempt to distinguish its “residential electric lighting fixtures” from the terms “lamps,” on the basis of whether a clear coating or a colored coating is applied, is without merit. This is again an attempt to bootstrap into the rules a distinction for which there is no basis, in order to achieve FCL’s desired outcome. While the term “lamp” is not defined in the Act or regulations, the rules provide no basis for distinguishing between color coated lamps and clear coated lamps, and there is no separate category for “residential electric lighting fixtures.” Furthermore, we agree with the Agency that there is no basis for including an SIC code analysis in this determination, since the rules do not distinguish between categories of lamps on the basis of SIC code. Furthermore, the term “lamp” is specifically included within the Illinois definition of metal furniture. FCL’s reference to other sections of the Clean Air Act (CAA) wherein metal furniture is defined so as to exclude lamps are therefore inapposite.

As stated above, RACT is defined as the lowest emission limitation that an emission unit is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. (35 Ill. Adm. Code 211.5370.) The RACT rules, including the limitations for metal furniture set forth in Section 218.204(g),

establish limitations which are defined as constituting reasonably available control technology for specific industries. At times, there are specific sources within the broad categories established for which the established limitations are not reasonably achievable. For such situations, the Act makes available site-specific relief, including site-specific rules, adjusted standards, and, variances. It may be correct that there is no reasonably available control technology which would enable FCL to comply with the emissions limitations for its clear coating process. If this is true, FCL would be entitled to site-specific relief, such as an adjusted standard. However, the record in this matter does not provide the Board with sufficient information to make such a determination, nor is such a determination appropriate in the context of a permit appeal.

### CONCLUSION

For the reasons set forth above, we find that the rules for metal furniture coating are applicable to the clear coating of metal furniture. We also find that FCL's residential electric lighting fixtures constitute "lamps" as that term is used in the definition of metal furniture at 35 Ill. Adm. Code 211.3710. We therefore conclude that FCL's clear coating of brass and brass-plated zinc castings is subject to the limitations for metal furniture coating set forth at 35 Ill. Adm. Code 218.204(g). Because this is the sole issue of dispute between the parties, we deny FCL's motion for summary judgment, and grant summary judgment in favor of the Agency.

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

### ORDER

The December 6, 1995 determination by the Illinois Environmental Protection Agency which denied Frederick Cooper Lamps application for a permit to construct and operate a clear lacquer applicator and a curing oven is hereby affirmed, and this docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (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 \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board