

ILLINOIS POLLUTION CONTROL BOARD
January 5, 1989

RIVERSIDE LABORATORIES, INC.,)
)
 Petitioner,)
)
 v.) PCB 87-62
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by B. Forcade):

The majority holds that Riverside Laboratories, Inc. ("Riverside") is not subject to the Board's paper coating regulations. I disagree.

First, I believe that many of the arguments raised in this proceeding are completely tangential to the issue necessarily before the Board. The only issue in this proceeding is whether Riverside's operation may properly be deemed paper coating. If it can, then Riverside's application did not demonstrate compliance with the relevant regulations and the permit should be denied. If Riverside's operations are not paper coating then a permit denial premised on those regulations is clearly inappropriate.

The exclusive question is whether Riverside meets the definition of a paper coater. Whether Riverside was informed by the Agency of its regulatory status in 1985 is irrelevant to whether Riverside meets the definition of a paper coater. Whether Riverside provided accurate emissions data to the Agency is irrelevant to whether Riverside meets the definition of a paper coater. Whether it is technically feasible for Riverside to meet a specific numerical emission limitation is irrelevant to whether Riverside meets the definition of a paper coater. (See Navistar International Transportation Corp. v. EPA, 28 ERC 1533 (CA 6, September 23, 1988)) And, whether the Agency should have asked for more information in lieu of permit denial is irrelevant to whether Riverside meets the definition of a paper coater. These ancillary matters obscure rather than clarify the central issue.

One issue that is on point, however, is Riverside's assertion that it cannot be regulated as a paper coater because it was not specifically identified as an affected facility in the regulatory proceeding that adopted the paper coating rules. Further, Riverside asserts that several documents were introduced

in that proceeding which did identify named affected facilities and Riverside was not one of them. The Agency counters that the failure to identify Riverside derived from incorrect emissions data submitted by Riverside.

I believe that the Board can effectively regulate a facility by providing a proper description of the activities conducted, even if the name of the facility is never specifically mentioned.

Regulation, by its nature, affects classes and categories of facilities and activities. If there is an additional requirement that the regulated entity be identified by name within the record of the rulemaking, then the definition of the regulated activity becomes superfluous and the list of named facilities becomes controlling. Further, such a requirement would place undo burden on the quality, veracity and clarity of information supplied to the Agency by regulated entities. I believe the regulation should properly describe what is regulated, and anything which meets that definition should be subject to regulation even if not identified by name in the regulatory docket.

That leaves the central issue of whether Riverside's activities meet the definition of a paper coater. Board regulations governing paper coaters are found at 35 Ill. Adm. Code 215.204 (c). Paper coating is defined at 35 Ill. Adm. Code 211.121:

"Paper Coating": the application of a coating material to paper or pressure sensitive tapes, regardless of substrate, including web coatings on plastic fibers and decorative coatings on metal foil.

Riverside itself describes the material substrate as a paper, in fact, a "thermosetting laminating paper". (R. 30-33). Indeed, the "paper" of papercoating covers paper, pressure sensitive tapes, plastic fibers, and metal foil. There is no question that the "Paper" part of paper coating is satisfied. The question is what kind of coating does Riverside do.

Riverside argues that it is not a surface coater and therefore it does not meet the definition of "coating line" in 35 Ill. Adm. Code 211.122, and therefore it cannot be a paper coater. (Pet. Br., p. 28) Riverside argues that it certainly is subject to the Generic Rule Parts PP and QQ (35 Ill. Adm. Code 215.920-215.943) which were adopted on April 7, 1988. (Pet. Br., p. 47-56) Those regulations establish a 3.5 lb/gal limit for "coating lines" (35 Ill. Adm. Code 215.926 (a)(2)) and an 81% control system efficiency for other sources. Since Riverside argues that it is not a "coating line", and therefore not subject to the 3.5 lb/gal limitation, it must be some other type of process that would be subject to the 81% limit. Riverside never

explains what "other" type of facility it might be. Certainly, Riverside cannot argue that it does not meet the regulatory definition of "coating line" when discussing paper coaters but that it does meet the definition of "coating line" when discussing the generic rule.

I think Riverside's operation is paper coating. The activity in question involves the application of a material to a paper substrate. Riverside admits that in its activities, a substrate which is properly characterized as "paper" is being processed in a fashion that can fairly be called "coating". (Pet. Br., p.54; R. 208).

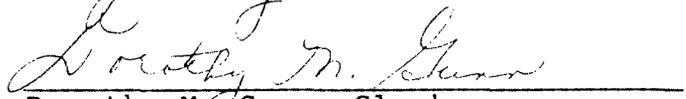
The simple facts are that Riverside is a major source of hydrocarbon emissions in an ozone non-attainment area. Since the Clean Air Act requires all such sources to be controlled by a RACT regulation, there are only three options. First, Riverside is covered by the paper coating rules. Alternatively, Riverside is covered by some other Board RACT regulation. Or, finally, Riverside is not covered by any Board RACT regulation and the Illinois Ozone SIP is defective for this reason. Not even Riverside argues the last option to be true. I find the rationale for calling Riverside a paper coater has superior logic to a determination that Riverside is somehow covered by other regulations.

For these reasons, I dissent.



Bill S. Forsade, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 23rd day of January, 1989.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board