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2 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

3

4 IN THE MATTER OF:)

5)

6 Petition of Central Can Company) AS 94-18

7 for an Adjusted Standard from) (ADJUSTED STANDARD)

8 35 Ill. Adm. Code 218)

9)

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12 THE PROCEEDINGS HAD, in the above hearing

13 taken before Stephanie L. Zwolinski, a Notary Public

14 within and for the County of Cook, State of Illinois,

15 and a Certified Shorthand Reporter of said state, at 100

16 West Randolph Street, Suite 8-032, Chicago, Illinois, on

17 June 15, 1998, commencing at the hour of 1:30 p.m.

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IN RE: PETITION OF CENTRAL CAN COMPANY

1 APPEARANCES:

2 HEARING TAKEN BEFORE:
3 MR. CHARLES A. KING
4 ILLINOIS POLLUTION CONTROL BOARD
5 100 West Randolph Street
6 Suite 8-032
7 Chicago, Illinois 60601
8 (312) 814-6926

9
10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

11 Ms. Marili McFawn
12
13 Mr. Anand Rao

14 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBER PRESENT:

15 Ms. Rachel Doctors
16
17 Mr. David Hulskotter

18 CENTRAL CAN COMPANY EMPLOYEES:

19 Mr. Richard T. Kingman
20
21 Mr. Jun Choi
22
23 Mr. Robert W. Kaiser
24
25 Ms. Dorian M. Mlsna

26 LAW OFFICES OF CHUHAK & TECSON, P.C.
27 225 West Washington Street
28 Suite 1300
29 Chicago, Illinois 60606
30 BY: Mr. Andrew P. Tecson,
31 Mr. Daniel J. Biederman
32 appeared on behalf of Central Can Company.

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17 Petitioner's Exhibit No. 1 entered into 20 2
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18 Petitioner's Exhibit Nos. 2-5 for 22 17
19 identification

20 Respondent's Exhibit No. 1 entered into 34 14
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21 Respondent's Exhibit No. 2 marked for 42 15
22 identification

1 MR. KING: Good afternoon everyone. This is the
2 hearing in the matter of AS-98 -- excuse me, AS 94-18,
3 in the matter of Petition of Central Can Company for an
4 adjusted standard from 35 Illinois Administrative
5 Code 218.

6 I am Hearing Officer Charles King. Also here from
7 the Pollution Control Board this morning are Board
8 members Marili McFawn --

9 MS. McFAWN: Good afternoon.

10 MR. KING: -- and Anand Rao from the Board's
11 technical unit.

12 We will start with appearances for the record.

13 MR. TECSON: Andrew Tecson of the firm Chuhak &
14 Tecson representing Central Can, the petitioner.

15 MR. BIEDERMAN: My name is Daniel J. Biederman also
16 on behalf of the petitioner.

17 And, again, I would like to seek leave to file an
18 additional appearance. I have not previously appeared
19 in this case.

20 MR. KING: Are there any objections to
21 Mr. Biederman appearing in the case?

22 MS. DOCTORS: No, there are not.

23 MR. KING: All right. Then you will be granted
24 leave. You can file your appearance.

1 MS. DOCTORS: Rachel Doctors. I am counsel with
2 the Illinois Environmental Protection Agency.

3 MR. KING: All right. Thank you.

4 I notice there are other people present at the
5 hearing today.

6 Is anyone else interested in making comments during
7 the course of the hearing?

8 MR. TECSON: We have one person that's a witness,
9 but those people are all employed or consulting with the
10 petitioner, so there are no outside parties in my group
11 sitting from John to Bob.

12 MR. KAISER: I am Robert Kaiser, director of
13 technical services for Central Can. I am currently
14 retired, but I am on a consulting basis with Central Can
15 Company.

16 MR. BIEDERMAN: Mr. Kaiser will be a witness for us
17 today.

18 MS. DOCTORS: David Hulskotter will be a witness
19 for the Illinois Environmental Protection Agency.

20 MR. KING: Is that everyone?

21 MR. BIEDERMAN: Uh-huh.

22 MR. KING: All right. We will move on to opening
23 statements then.

24 I understand that the parties have agreed to take

1 these out of order in the interest of efficiently
2 presenting this matter. So, Ms. Doctors, do you have
3 anything you want to say?

4 MS. DOCTORS: Before I proceed to my opening
5 statements, I would like to have five joint exhibits
6 admitted, mostly these are by way of background. The
7 first four had previously been submitted as both the
8 petitioner's adjusted standard and the Agency's
9 recommendation.

10 So, Exhibit -- Joint Exhibit 1 is how the
11 controversy arose in the definition of Can from USEPA.

12 The second one came about when Central Can
13 approached USEPA about an adjusted standard, and they
14 agreed, so that would be Joint Exhibit 2.

15 Joint Exhibit 3 is also -- this case went on for a
16 long time, and they realized that they were going to
17 need a slightly different adjusted standard, and they
18 went to USEPA again, and USEPA again agreed, and that
19 was in Joint Exhibit 3.

20 USEPA requested an assurance. They needed to
21 provide an additional assurance, and that's in Joint
22 Exhibit 4. And Joint Exhibit 5 is the language that
23 Central Can, Andrew Tecson, and I came to agreement with
24 regard to the adjusted standard, and it is substantially

1 identical to what the Agency provided in its conclusion;
2 although, the Agency's language had a couple of
3 typographical errors that had been corrected in this --
4 in the joint exhibits.

5 So, I would ask that they be admitted at this time.

6 MR. BIEDERMAN: No objections.

7 MR. KING: Thank you.

8 Then these will be admitted into the record.

9 MS. McFAWN: Off the record.

10 (Whereupon, a discussion was held off
11 the record.)

12 MR. KING: I will just run through these again for
13 clarification in the record.

14 Joint Exhibit 1 is a letter from
15 Stephen Rosenblatt to -- excuse me -- Stephen Rothblatt
16 of the U.S. Environmental Protection Agency to Donald
17 Sutton of the Illinois Environmental Protection Agency,
18 dated September 24, 1992.

19 Joint Exhibit 2 is a memorandum from
20 Stephen Rothblatt to John Silvasi of the U.S.
21 Environmental Protection Agency, dated March 23, 1994.

22 Joint Exhibit 3 is a letter from Jay
23 Bortzer, B-o-r-t-z-e-r, of the U.S. Environmental
24 Protection Agency to Rachel Doctors, January 23, 1998.

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IN RE: PETITION OF CENTRAL CAN COMPANY

1 Joint Exhibit 4 is a letter from Dorian
2 M. Mlsna, M-l-s-n-a, to William Jones, Jay Bortzer,
3 Rachel Doctors, and Ed Doty, D-o-t-y, dated February 17,
4 1998.

5 Joint Exhibit 5 is proposed language
6 for the adjusted standard.

7 And like I said, those will be exhibits
8 made part of the record.

9 Do you want to proceed with an opening
10 statement?

11 OPENING STATEMENTS

12 BY MS. DOCTORS:

13 Yes, I would like to.

14 As has been stated, my name is Rachel Doctors, and
15 I am representing the Illinois Environmental Protection
16 Agency in this matter.

17 First, I would like to note that we are giving
18 opening statements and witness testimony out of order.

19 For clarification, normally the petitioner would go
20 first, so I will proceed.

21 I would like to give a summary of the background
22 that has preceded this hearing, then I will produce
23 Mr. Hulskotter and request that his testimony be
24 admitted as written as it pertains to the technical

1 merits of the petition.

2 At the outset, I would like to state that the
3 Agency is recommending that the adjusted standard be
4 granted and granted retroactively to July 1, 1991, as
5 stated in Joint Exhibit 5. This recommendation is made
6 in light of CCC's compliance efforts, including a switch
7 to predominant use of water based coatings, USEPA's
8 concurrence on the adjusted standard, CCC's compliance
9 with the lower allowable VOM emission rate since the
10 effective date of rule-making 91-7 that was adopted July
11 1, 1991, and it's commitment to change to water based
12 coatings on lines not controlled by an afterburner. The
13 terms of the adjusted standard stated before have been
14 agreed to by Central Can and have been provided to USEPA
15 and have also received preliminary approval if the Board
16 grants the adjusted standard of this particular
17 language.

18 On February 23, 1995, CCC filed an amended petition
19 for adjusted standard from the requirements of the
20 coating of cans and pails as provided in 35 Ill. Adm.
21 Code in Subpart F, specifically Sections 218.204, 205,
22 and 207 for its coating facility.

23 On a daily basis, the company currently produces
24 cans and pails that have walls with thicker and thinner

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IN RE: PETITION OF CENTRAL CAN COMPANY

1 than 0.0141 on four lithography lines and eight spray
2 booths, so that's how the petition came before the
3 Board.

4 However, there was a previous petition that related
5 to the Board's adoption on July -- in July of 1991 to
6 satisfy deficiencies cited by USEPA pursuant to the
7 Federal Implementation Plan and the Chicago ozone
8 non-attainment area in 91-7. This rule-making changed
9 the provisions for coating facilities, specifically the
10 internal offset provisions were amended in 218.205 to
11 distinguish between the coating of miscellaneous metal
12 parts and cans.

13 Prior to July 1991, petitioner had previous been
14 subject to the provisions applicable to can coating
15 facilities at 35 Ill. Adm. Code Part 215, Subpart F, and
16 complied with Section 215, 207(a), the internal offset
17 provision that allowed a coating facility to aggregate
18 emissions in coating of pails with the emissions from
19 the coating of cans whether or not the lines have a
20 capture and control device.

21 However, in October of 1992, the Illinois EPA
22 denied the company's operating renewal application for
23 failure to demonstrate compliance with new sections
24 218.204(j) and 207(d) for the coating of miscellaneous

1 metal parts that applies to the coating of containers
2 that have walls thicker than 0.0141 inches or what's now
3 defined as a pail.

4 On November 9, 1992, CCC appealed the denial of the
5 permit in PCB 92-176. That permit appeal is still
6 pending until final resolution of this adjusted
7 standard.

8 In December of 1992, CCC contacted USEPA about
9 obtaining the leave and requested that it be allowed to
10 aggregate emissions from pail coating with those from
11 can coating because the allowable about VOM emission
12 limitations for miscellaneous metal part coatings are
13 higher than for can coatings. It indicated that it
14 would be burdensome to keep separate records when the
15 same coating was applied to both types of containers.

16 CCC also argued that they would have to construct
17 four additional lines, and that that would be a severe
18 hardship.

19 The Agency agrees with the petitioner's reasoning.
20 CCC has complied with the limitation for coatings of
21 cans when it coats pails; although, it is a lower
22 emission limit, regardless of whether it is complying to
23 the cross-line averaging provisions or using a coating
24 that has a VOM content equal to or less than the

1 allowable emission limitations of cans as stated in
2 218.204(b).
3 In September of 1993, the Board again revised the
4 rules for can coating and miscellaneous metal parts
5 coating in PCB 93-9. The definition for can was amended
6 to limit it to containers with walls thinner than 0.0141
7 inches. A definition of pail was added to define
8 containers with walls thicker than 0.0141 inches. And
9 Section 218.207(h) was amended to limit cross-line
10 averaging to the emissions of can coating lines but
11 retained the provisions that allowed the emissions for
12 coating lines to be aggregated whether or not they were
13 equipped with a capture and control device.

14 These amendments were made pursuant to comments by
15 USEPA on Illinois EPA's proposal to adopt provisions of
16 the fifth of the Chicago ozone non-attainment area, and
17 this is shown in Joint Exhibit 1.

18 On March 23, 1994, USEPA indicated that CCC and the
19 Agency should adopt the site-specific rule revision that
20 would allow them to cross-line average all of its
21 can-shaped containers regardless of metal thickness so
22 long as no more than 10 percent of the units had walls
23 thicker than 29 gage, and that's in Joint Exhibit 2.

24 On August 13, 1997, CCC requested an increased

1 production limit on pails to 20 percent on -- and on
2 January 23, 1998, USEPA agreed to an increased
3 proportion production limit subject to USEPA receiving
4 assurances from CCC that additional relative increases
5 in the proportionate pail coating would not occur in the
6 foreseeable future, and that's in a letter dated to
7 myself in Joint Exhibit 3.

8 On February 17, 1998, CCC sent a letter to USEPA
9 and the Illinois EPA with that assurance, and that's in
10 Joint Exhibit 4.

11 The Illinois EPA and the company reached an
12 agreement of conditions for the adjusted standard
13 consistent with USEPA's recommendation, and that's in
14 Joint Exhibit 5.

15 The Agency believes that its recommendation is
16 consistent with requirements of Section 28.1 of the Act
17 that allows the Board to grant an adjusted standard if
18 it determines that these factors have been met. The --
19 first, when the Board adopted R91-7, the technical
20 support department for WRAC2 for surface coating of
21 miscellaneous metal parts, contains a list of effected
22 sources, and CCC is not on this list; however, they were
23 on the earlier list in WRAC1 as a can coater. At the
24 time 91-7 was adopted, the investigation was not

1 performed for can coating facilities that might also be
2 miscellaneous metal part coaters.

3 Further, they are the only manufacturer in Illinois
4 which is producing containers that are both cans and
5 pails. As the petitioner stated, the coatings for and
6 the size of the containers are controlled by federal and
7 international regulations.

8 The petitioner would suffer undue hardship of
9 complying with the regulations for two reasons. First,
10 the cost of compliance exceeded USEPA's estimates for
11 compliance with WRAC limitations at that time. Second,
12 if petitioner chose not to coat pails with non-compliant
13 coatings, it would lose a significant portion of its
14 business.

15 As discussed in the Agency's recommendation and in
16 the testimony that will be submitted, the requested
17 adjusted standard will not result in environmental
18 health effects that are adverse because the petitioner
19 is accepting lower or equivalent allowable VOM emissions
20 in a severe ozone non-attainment area. The allowable
21 VOM emissions when it's for can coating are the same or
22 lower than those for miscellaneous metal coating. That
23 means that CCC will admit at least at approximately the
24 same level or less than they would have been permitted

1 to emit if the petition had complied with the applicable
2 regulations for miscellaneous metal parts.

3 Finally, the adjusted standard is consistent with
4 federal law. As CCC has agreed to an allowable VOM
5 emission rate that is more stringent than the one that
6 PCB has determined to be WRAC for this category.

7 Further, USEPA recommended parties negotiate a
8 site-specific rule, and has given preliminary approval
9 of the approach taken by the parties. Therefore, the
10 Agency is recommending that the adjusted standard
11 pursuant to Section 28.1 be granted to the company's
12 facility at 3200 Kilbourn Avenue in Chicago subject to
13 the provisions and conditions in Joint Exhibit 5.

14 Further, the Agency is recommending that the
15 adjusted standard be granted retroactive to the
16 effective date of PCB 91-7, July 1 1991.

17 MR. KING: All right. Thank you.

18 Do you have anything to say?

19 OPENING STATEMENTS

20 BY MR. TECSON:

21 I do.

22 As I have indicated, my name is Andrew Tecson. I
23 am with the firm of Chuhak & Tecson. And the
24 petitioner, Central Can, is requesting this adjusted

1 standard. It would relieve Central Can from complying
2 with the requirements of 218.204(j), 218.205(b), and
3 218.297(d) relating to the miscellaneous metal parts as
4 long as their production at Central Can is less than 20
5 percent of the sum of the units of cans and pails
6 produced by Central Can.

7 Our testimony will show that the cans and pails
8 produced by Central Can are identical in their shape and
9 volume, manufacturing process, and coatings. The only
10 difference is that the cans by the IEPA definition are
11 made of metal which is either thicker or thinner than
12 0.0141 inches -- excuse me -- the cans are thinner than
13 0.0141 inches, and the pails are made of metal thicker
14 than 0.0141.

15 The essence of Central Can's request is that the
16 difference in metal thickness of .0001 of an inch should
17 not subject Central Can to the requirements of
18 re-engineering its facilities to create new lines to
19 produce those pails which have the thicker metal which
20 would need to be separate from the lines that are
21 currently producing both cans and pails simultaneously.

22 In terms of the standards that we need to meet, we
23 need to show that we are sufficiently different from
24 those factors relied upon by the Board in adopting

1 general regulations, that those factors justified an
2 adjusted standard, that it will not result in
3 environmental health effects more adverse than what the
4 rules of general applicability would apply, and that
5 it's consistent with applicable federal law.

6 To Central Can's knowledge, we are the only can
7 manufacturer in Illinois which is also producing these
8 pails that are basically the same containers with a
9 slightly different thickness of metal. We are also
10 subject to extensive federal regulations which are in
11 our amended petition that relate to how thick metal can
12 be for these containers, and, therefore, we must comply
13 with those when our customers request they be produced
14 with that type of metal.

15 We have, in our petition, addressed the cost
16 factors and the re-engineering problems with trying to
17 create a factory within a factory, to create
18 miscellaneous metal parts rather than cans when we have
19 everything set up to create our cans and pails on one
20 line. And if this adjusted standard is granted, Central
21 Can will continue to be approximately 28 tons below the
22 existing allowable VOM limits during the ozone season or
23 about 47 percent lower than the allowable limits of 61
24 tons of VOM emissions. So, there is no adverse impact

1 to the environment resulting from the adjusted standard,
2 and, as indicated, the USEPA has endorsed the request
3 for the adjusted standard, so we believe we comply with
4 federal law and ask that the Pollution Control Board
5 issue the adjusted standard as set forth in Joint
6 Exhibit No. 5.

7 That's the end of my opening statement.

8 MR. KING: Okay. Thank you.

9 Who will be presenting their witness first?

10 MS. DOCTORS: Why don't you go with your witness
11 first?

12 MR. BIEDERMAN: I would like to produce Mr. Robert
13 Kaiser.

14 (Witness sworn.)

15 DIRECT EXAMINATION

16 BY MR. BIEDERMAN:

17 Q Sir, would you state your name for the
18 record?

19 A Robert W. Kaiser.

20 Q Mr. Kaiser, by whom are you employed?

21 A Central Can Company.

22 Q And how long have you been employed by
23 Central Can Company?

24 A Since 1970, April 1st.

1 Q Sir, I am handing you a document that is
2 entitled the testimony of Robert W. Kaiser. Would you
3 review this document for me, please?

4 A All right. Okay.

5 Q Sir, have you seen this document before?

6 A Yes, I have.

7 Q And what is this document?

8 A This is my testimony concerning the permit
9 appeal.

10 Q And, sir, did you assist in the preparation
11 of this testimony?

12 A Yes, I did.

13 Q And does this document bear your signature on
14 Page 10?

15 A Yes, it does.

16 MR. BIEDERMAN: Mr. Hearing Officer, I would like
17 to move that the written testimony of Robert Kaiser be
18 entered into evidence.

19 MR. KING: Any objection?

20 MS. DOCTORS: There is no objection.

21 MR. KING: All right then. That will be entered in
22 as 6.

23 MR. BIEDERMAN: Thank you.

24 MS. DOCTORS: Mr. King, how are you going to mark

1 this?

2 MR. KING: This will be Petitioner's Exhibit 1. I

3 am sorry.

4 MS. DOCTORS: Okay.

5 MR. BIEDERMAN: Mr. Hearing Officer, in addition to

6 Petitioner's Exhibit No. 1 reflecting the written

7 testimony of Robert Kaiser, I have a few follow-up

8 questions for Mr. Kaiser.

9 BY MR. BIEDERMAN:

10 Q Mr. Kaiser, have you brought with you today

11 several examples of a pail and a can manufactured by

12 Central Can?

13 A Yes, we have marked two containers that are

14 virtually identical in shape, color, interior coating,

15 the only difference being that one is a pail and one is

16 a can by the definition of the gage of steel.

17 Q And, sir, I would like you to inspect these

18 two pieces of evident, if you will?

19 A All right.

20 MR. KING: Let's go off the record for a second.

21 (Whereupon, a discussion was held off

22 the record.)

23 BY MR. BIEDERMAN:

24 Q Sir, would you describe for me the pieces of

1 evidence that I have just given you?

2 A Okay. All right. I am holding a -- what, by
3 definition, is a pail, okay. It is identical in shape
4 to the one that we are going to show in a minute, which
5 is the can.

6 The interior coating is the same. The
7 exterior coating is the same. The gasket and the lid of
8 these containers are both the same. The only difference
9 in these two containers is the gage of the steel. This
10 particular container is probably about 0.016 inches.
11 Okay. And I will mark these as what is considered a
12 pail.

13 MR. BIEDERMAN: For the record, I have placed
14 exhibit stickers, and I would ask that the witness mark,
15 for identification purposes, the pail that he has just
16 described.

17 BY THE WITNESS:

18 A The other container, as I said, is identical
19 in shape and color and interior and coatings and
20 everything except the gage of the steel, and this
21 container is probably a 0.013 inches, okay, and so I
22 will mark this as a can.

23 MR. BIEDERMAN: And for the record, this bears the
24 exhibit label reading Exhibit Can, and I have added ID

1 for identification purposes, as does this exhibit as
2 identified as Pail, ID.

3 MS. McFAWN: So that's the lid and the base of the
4 pale?

5 MR. BIEDERMAN: Correct.

6 MS. McFAWN: And is there a number on those --
7 identification numbers?

8 MR. BIEDERMAN: No. I will put -- this is
9 Petitioner's Exhibit No. 2.

10 MS. McFAWN: That would be the lid to the pail.

11 MR. BIEDERMAN: The is the lid to the pail. It
12 reads Exhibit 2, Pail, ID.

13 The pail itself will bear the marking, Petitioner's
14 Exhibit 3, Pail, ID. We have Petitioner's Exhibit 4,
15 Can, ID, which is the lid and Petitioner's Exhibit 5,
16 Can, ID.

17 (Whereupon, the items
18 above-referred to were marked
19 Petitioner's Exhibit Nos. 2-5
20 for identification.)

21 BY MR. BIEDERMAN:

22 Q Mr. Kaiser, you said that each of those
23 exhibits that have been marked for identification were
24 coated on the same line; is that correct?

1 A That's correct.

2 Q Mr. Kaiser, I am handing you what has
3 previously been marked as Joint Exhibit No. 5, and I
4 would like you to review this document, please?

5 A Okay.

6 Q Mr. Kaiser, does that exhibit accurately
7 reflect the adjusted standard that you are seeking?

8 A Yes.

9 MR. BIEDERMAN: I have no further questions.

10 MR. KING: Ms. Doctors, do you have any questions
11 for the witness?

12 MS. DOCTORS: Can you give me one second?

13 MR. KING: Sure.

14 MS. DOCTORS. No. I have no questions. I need to
15 check something.

16 MR. BIEDERMAN: Thank you, Mr. Kaiser.

17 MR. KING: All right. We are going to take a short
18 break now so that the Board members can review the
19 testimony that Mr. Kaiser has filed, so why don't we
20 come back here in ten minutes.

21 MS. McFAWN: How about 2:20. We will reconvene at
22 2:20.

23 (Whereupon, a recess was taken.)

24 MR. KING: All right. We are back on the record.

1 Ms. McFawn, do you have a question for the witness?

2 MS. McFAWN: Yes. I have had a break to review
3 your testimony that's been admitted. It was most
4 helpful.

5 It actually was very comprehensive along with your
6 amended petition. I don't have any questions for you,
7 Mr. Kaiser, at this time unless you feel like you can
8 answer them, but I do have a question for Central Can,
9 and I was curious as to why you didn't cite a
10 sight-specific rule? Was there any particular reason?

11 MS. DOCTORS: Do you want me to --

12 MR. TECSON: Go ahead.

13 MS. DOCTORS: I would say since I wasn't involved
14 that I don't know why it was done that way. It's
15 because I think it was Mr. Davis -- I don't know if you
16 know Kyle Davis -- who initially was involved with
17 USEPA. He was -- he is an attorney with the Illinois
18 Environmental Protection Agency with us in my position,
19 and he originally did the negotiation.

20 MS. McFAWN: So, he might have recommended it to
21 Central Can?

22 MS. DOCTORS: Yes.

23 MS. McFAWN: Are you aware of that?

24 MR. TECSON: Yes. I have -- this is Andrew Tecson.

1 I have worked with Central Can on this project for many
2 years, and we have had two or three IEPA attorneys
3 through the process, but they get promoted and move on
4 to different things. And what we have done, as I think
5 Rachel's opening statement has shown, is we have tried
6 to work with both the IEPA and the USEPA, actually
7 meeting in Springfield with technical people and in the
8 Region 5 office with the technical people, and so we
9 have really tried to follow their recommendations.

10 We did not have a preference. We just came in and
11 gave testimony with containers like these today and
12 explained our situation, and then we tried to work with
13 the agencies, both at the federal and state level, to
14 proceed along on their basis of recommendation.

15 I actually wonder if -- does the federal letter
16 actually suggest this particular route, one way or the
17 other?

18 MS. DOCTORS: I think USEPA, at least when I have
19 been working with them on this, among other issues, they
20 are not very familiar with our process. I mean, they
21 know there is a Pollution Control Board, but they are
22 not familiar enough with our regulations and our system
23 to know the difference between a site-specific rule and
24 an adjusted standard. So, they did use the

1 site-specific language, but we have also used adjusted
2 standards for other types of things.

3 MS. McFAWN: Mr. Kaiser, I do have one question
4 that I can direct to you, and I think you might be the
5 technical person to answer this.

6 I notice in your amended petition that you talk
7 about a \$6 million cost estimate if you were to comply
8 with the rules that would otherwise apply absent the
9 adjusted standard, and I believe there was a caveat in
10 that that said that it was an estimate, and that you
11 said documenting these costs would be unduly burdensome
12 due to the amount of planning and engineering necessary
13 to demonstrate these costs, but could you talk a little
14 bit about the costs or how you arrived at this figure?

15 THE WITNESS: I may want to defer that part to
16 Andy, but I do know that what would be needed would be
17 new spray lines, new ovens, okay, and these are
18 gas-fired ovens, which are probably 100 feet long and
19 very high capacity. And I do believe that at the time
20 that we were pricing ovens and line spray booths and
21 things of this type, that that would be -- people were
22 talking well over \$1 million per line, and that was
23 without anything else to go with it, okay, and that
24 was --

1 BY MR. TECSON:

2 Q Mr. Kaiser, just to have you elaborate on
3 that, could I ask right now how many lines do you have
4 for your -- you know, like your spray operations?

5 A Well, there are three major lines right now.

6 Q How many for lithographic operations?

7 A I guess there are four.

8 Q And right now. Do you run on your spray and
9 lithographic operation, on each line, cans and pails --

10 A Right.

11 Q -- on the same day?

12 A Right.

13 Q And do you spray on with this equipment both
14 the inside of the can and the outside of the can
15 simultaneously?

16 A On the spray lines we do. Right.

17 Q Okay. So, on the spray lines, then you
18 have -- is it correct to say that you have highly
19 expensive equipment that processes the whole piece of
20 metal from beginning to end, which is spraying
21 simultaneously two different VOM emission categories of
22 spray?

23 A That is correct.

24 Q Because the interior has one limit and the

1 exterior has another?

2 A Right. And you have to have spray booths and
3 large transfer mechanisms to get the containers onto the
4 transfer mechanisms, and then you have to have the spray
5 equipment, the pumps used to spray the coatings, and
6 then the biggest cost would still be the oven.

7 So, along with the oven cost, there is
8 a whole -- a high degree of expense just to get to that
9 point. To put this line in, each line would be that
10 much money.

11 MS. McFAWN: So, each line was, as he is
12 describing, where it sprays both the interior and
13 exterior?

14 THE WITNESS: That's correct.

15 BY MR. TECSON:

16 Q Mr. Kaiser, if we had to treat every pail as
17 miscellaneous metal part --

18 A Right.

19 Q -- would we have to buy or create -- do
20 something to create separate lines from the equipment we
21 currently have?

22 A That's correct. Yeah. At least three lines.

23 Q And just to give the hearing officer a sense
24 of -- just roughly how many people are employed at this

1 Chicago facility?

2 A Oh. It's 130 or so, I believe.

3 Q And how big is the facility roughly, square
4 feet?

5 A You are going to have to help me.

6 MR. KINGMAN: 300,000 square feet.

7 BY MR. TECSON:

8 Q 300,000 square feet.

9 And all you make in this facility are
10 these pails and cans?

11 A That's right.

12 Q Right now, all of your production is set up
13 in the 300,000 square foot facility to process these
14 things simultaneously?

15 A Yes. So, there could well be a space problem
16 too.

17 MR. TECSON: Does that help at all?

18 BY THE WITNESS:

19 A One of our problems is that we have to react
20 to what our customers want. We can't make like a Model
21 T Ford and say you are going to get a black pail, is
22 what the guy wants. So, we have a guy that wants a
23 white pail and he wants a white can, and so normally we
24 would run that down the same line, and we wouldn't be

1 able to do that. We would have to run it on separate
2 days.

3 So, if a guy wanted the containers on
4 the same day, both of them, then we already have a
5 scheduling problem, and so the only real way out of that
6 is to build more equipment because of the restrictions
7 on what you can do with them and the metal parts.

8 BY MR. TECSON:

9 Q And, Mr. Kaiser, in the lithographic area,
10 there are two different areas, one is lithography and
11 one is spray?

12 A Right.

13 Q In the lithography area we also are
14 processing on the same day both can and pail --

15 A Yes.

16 Q -- pieces?

17 A Right.

18 Q Those are controlled by afterburners; is that
19 correct?

20 A Yes. That's correct.

21 Q So, would it be a potential that if we had to
22 build separate lines for pails --

23 A That's possible. In fact, when we schedule
24 it, we do it on purpose. If we are going to coat

1 something in black, we would schedule a can and the pail
2 in the same line to make us more efficient, use the same
3 coating. And so that's a reason that we are pushing
4 into the direction we are going, so we can get more
5 flexibility and not have to add more equipment.

6 MS. McFAWN: So, that would be true on either type
7 of line, the spray or the lithography?

8 THE WITNESS: Yes.

9 BY MR. TECSON:

10 Q And the litho line, to do what we would do,
11 is it correct then we would need to engineer either new
12 afterburners or engineer to the existing ones, one or
13 the other?

14 A Right.

15 Q And is it correct that this is a relatively
16 complex plant that engineering takes some cost and time
17 and effort?

18 A Oh, yes.

19 Q And when we put in -- you know, expand, we
20 spend a lot of money?

21 A The way the plant is built, the spray area is
22 quite a distance away from the litho area, meaning that
23 you couldn't really tie into the afterburners that are
24 there. You would have to have new afterburners or some

1 other method of doing it.

2 So, all of the coaters that you might
3 have to buy and equipment at that time for the coating
4 and lithography are also very expensive pieces of
5 equipment, and -- as the rules have changed -- all of
6 the enclosures that you have to have around the new
7 equipment would be very costly also.

8 So, it's just a project that we really,
9 from our size, really didn't -- couldn't afford to get
10 into the millions of dollars and things.

11 MR. TECSON: Does that help answer the question?

12 MS. McFAWN: Yes. Thank you.

13 MR. TECSON: I know I am not a witness, but I can
14 tell you back at the time we tried to not hire engineers
15 and consultants to do all of the engineering work to do
16 all of those things. We said let's do a ball-park
17 figure, and Mr. Kaiser is not really the person that has
18 to buy all of the equipment. He deals with the VOM
19 emissions, so our chief financial officer who is back at
20 the plant sat down with me and we went through what it
21 would take to put in separate lines for everything and
22 start building sort of a factory within a factory.

23 MR. KING: Are there any other questions for
24 Mr. Kaiser?

1 Do you have any other witnesses?

2 MR. TECSON: No, we do not.

3 MR. KING: Thank you, Mr. Kaiser.

4 Ms. Doctors, do you have a witness?

5 MS. DOCTORS: Yes, I do.

6 (Witness sworn.)

7 DIRECT EXAMINATION

8 BY MS. DOCTORS:

9 Q Mr. Hulskotter, would you please state your
10 name for the record?

11 A David Hulskotter.

12 Q And what's -- where are you currently
13 employed?

14 A Illinois Environmental Protection Agency, the
15 permit section.

16 Q And what's your position?

17 A Environmental engineer -- environmental
18 protection engineer.

19 Q What do you do?

20 A I review permit applications and write
21 permits, basically.

22 Q Did you review the petition for Central Can
23 Company for adjusted standard?

24 A Yes, I reviewed the petition.

1 Q And what was your recommendation?

2 A I recommend the petition be granted.

3 Q I would like to have -- I would like you to
4 take a look at this document. Can you identify this?

5 A This is my testimony for the adjusted
6 standard.

7 Q And who prepared it?

8 A I prepared it.

9 MS. DOCTORS: Okay. I would like to have
10 Mr. Hulskotter's testimony admitted as written into the
11 record.

12 MR. KING: Are there any objections?

13 MR. TECSON: None.

14 MR. KING: All right. And this will be admitted,
15 and it is Respondent's Exhibit 1.

16 BY MS. DOCTORS:

17 Q I would like to show you Joint Exhibit 5, and
18 ask if you were asked to review and consult on this
19 language for the adjusted standard?

20 A That's correct. Yes, I reviewed it and
21 examined it. Yes.

22 Q And did you agree with the terms of the
23 adjusted standard?

24 A It looks appropriate to me.

1 MS. DOCTORS: Okay. Thank you. I have no further
2 questions.

3 MR. KING: Does the petitioner have any questions?

4 MR. BIEDERMAN: No.

5 MR. KING: Why don't we, again, take just a minute
6 off the record here for the Board personnel to review
7 this testimony.

8 (Whereupon, a recess was taken.)

9 MR. KING: Back on the record.

10 Are there any questions about this testimony?

11 MS. McFAWN: I have one.

12 Mr. Hulskotter, at the last page of Respondent's
13 Exhibit 1, you said that you requested that Central Can
14 calculate their allowable emissions for a one-year
15 period, and they calculated for coatings for
16 miscellaneous parts as well as coatings under the can
17 coating regulations. Those results, are they in
18 petitioner's amended petition or do you have a copy of
19 those results?

20 THE WITNESS: I have a copy.

21 MS. McFAWN: You do.

22 MS. DOCTORS: No. They are not part of the record.

23 THE WITNESS: Here is a table.

24 MS. DOCTORS: Wait a minute. Let's go off the

1 record.

2 (Whereupon, a discussion was held off
3 the record.)

4 MR. KING: All right. We are back on the record.

5 MS. McFAWN: So, can you either submit that
6 table -- are you sure it's not attached to their amended
7 petition?

8 MS. DOCTORS: We received updated numbers. The
9 petition is from, I think, 1995, and there were
10 subsequent meetings and discussions after the
11 submission.

12 MS. McFAWN: Could you submit those to the Board,
13 the updated tables?

14 MS. DOCTORS: Are you comfortable with that?

15 MR. TECSON: Sure.

16 MS. DOCTORS: Why don't you, Mr. Tecson, take a
17 look at the table?

18 MR. TECSON: If I could just show it -- this is
19 from 19 -- September -- prepared September 5, 1995, and
20 let me see how it is different from what was attached
21 here.

22 MS. McFAWN: I was looking at Exhibit H. Would
23 that be the first table that might contain this
24 information?

1 MR. TECSON: Correct. And I think what I am going
2 to find is this appears to probably run, Exhibit H,
3 after another summer has gone by. I will check that.

4 (Whereupon, a recess was taken.)

5 MR. KING: We are back on the record.

6 MS. DOCTORS: This is a document that was sent to
7 us from Central Can, so it's not -- they provided us
8 with additional information.

9 THE WITNESS: It may be difficult to follow. I
10 could explain it to you, if you want.

11 BY MS. DOCTORS:

12 Q Would you, Mr. Hulskotter, explain this
13 table?

14 A Where it says 100 percent can coater, that
15 would be the terms under the adjusted standard; and then
16 if we look at the allowed column, it says 212,920
17 pounds, so that would be their allowable VOM. I believe
18 during these months they would shut down the
19 afterburner.

20 MS. McFAWN: This would be during the ozone season
21 then?

22 THE WITNESS: Right. Ozone season.

23 MS. McFAWN: Do you shut down both afterburners
24 or just one during the non-ozone season? Just one,

1 right?

2 THE WITNESS: Right.

3 MS. McFAWN: Right

4 THE WITNESS: And if you look at three, that is a
5 calculation they made using can coating regulations for
6 their cans and metal parts, allowables for their metal
7 parts. If you look at that allowable, it's at 210,000.

8 MS. DOCTORS: Can you point to where you are
9 talking about on the sheet? So, he is looking at the
10 last row where it says combo one.

11 MS. McFAWN: So, as I understand it, you are
12 telling us the numbers that are in the row labeled
13 Report No. 3, Combo 1 --

14 MS. DOCTORS: Down in the last --

15 MS. McFAWN: And it would be the column that's
16 labeled allowed?

17 MS. DOCTORS: Right. So, it would be right at the
18 bottom?

19 MS. McFAWN: Yes. Okay, which has been corrected
20 by hand, correct?

21 MS. DOCTORS: (Indicating)

22 MS. McFAWN: And this represents what, again? The
23 miscellaneous --

24 THE WITNESS: The allowable VOC emissions during

1 the ozone season, March to November.

2 MS. McFAWN: Okay. And it's for the entire
3 facility or just the pail?

4 THE WITNESS: This would be the part of the
5 facility that calculates an alternative daily emission
6 limitation.

7 MR. ANAND: For miscellaneous parts?

8 THE WITNESS: Well --

9 MR. ANAND: And what we are trying to get at is in
10 your testimony, you made the statement as to how their
11 annual emissions compared between their miscellaneous
12 metal parts and if we just look at the cans, and we are
13 just wondering how this table illustrates that?

14 THE WITNESS: I am comparing the 212,000 number to
15 the 210,000 number and saying that's approximately the
16 same.

17 MS. McFAWN: And which one is calculated using the
18 can coating regulations?

19 THE WITNESS: That's 100 percent can coater at the
20 very top there.

21 MR. ANAND: And that's 212?

22 THE WITNESS: Yeah. And then you look at the
23 allowed, and the total of the allowed is 212,000
24 thousand.

1 MS. McFAWN: And under Report No. 3, you have
2 calculated using the miscellaneous parts?

3 THE WITNESS: For cans, we used can coating
4 regulations to get an allowable. And then for the metal
5 parts, we used the metal parts regulations and got an
6 allowable, and we came up -- adding those two numbers
7 together, we came up with 210,000.

8 MS. McFAWN: That's why it's called combination or
9 combo.

10 And then the second row down, which is 100 percent
11 can coater, new VOC limits as were effective in 1996,
12 what does that represent?

13 THE WITNESS: These calculations were made prior to
14 a rule change that made the VOC limits much more
15 stringent. And so, the allowable 165,000, that's what
16 the allowable for the can coater would be today, it
17 decreased. And also the combo would be decreased too,
18 but it takes -- it's a lot of work to do these
19 calculations, so we estimated again.

20 MS. McFAWN: Okay. These more recently effective
21 VOC limits for cans, which, according to the table here,
22 were effective 3-15-96, Central Can is not subject to
23 those regulations or will not be subject to those
24 regulations if we adopt the adjusted standard?

1 THE WITNESS: They will be subject to it, and they
2 are subject to them now.

3 MS. McFAWN: Okay.

4 MR. TECSON: May I just say our request never takes
5 us out of the -- if the Board continues to reduce the
6 VOM limits for a coating type, our adjusted standard
7 does not, in any way, take away your ability to do that.
8 In other words, when you go to check the sites and do
9 the regs, we continue to be subject to whatever the can
10 coating VOM limits are, so as you have historically
11 reduced those and continually do so probably, we will be
12 subject to that.

13 MS. McFAWN: Okay. Thank you.

14 MR. TECSON: You're welcome.

15 MR. ANAND: And can you explain what you have under
16 the last row, which is under the heading Combo 1 on the
17 table?

18 THE WITNESS: That's no longer relevant really.
19 That was -- if their pail coatings quadrupled, I
20 believe, instead of at the time they were using 10 to 20
21 percent pails -- producing 10 to 20 percent pails, this
22 would be if they started producing 40 percent pails, but
23 the adjusted standard is not going to allow that. It is
24 only going to allow them to 20 percent.

1 MR. ANAND: Okay.

2 THE WITNESS: But I don't know if that was
3 calculated correctly. That number looks very high to
4 me. No. 3 --

5 MS. DOCTORS: Go ahead.

6 THE WITNESS: No. 3, see, it got crossed out before
7 because they did not calculate it how I wanted it, so I
8 made additional comments, and they resubmitted it. So,
9 that's why it is changed.

10 So, No. 4 at that time may become not relevant, so
11 we did not ask them to correct that, so that could be
12 the reason for the very high number there.

13 MR. KING: Just for clarity on the record, we are
14 going to mark this as Respondent's Exhibit 2.

15 (Whereupon, the document
16 above-referred to was marked
17 Respondent's Exhibit No. 2 for
18 identification.)

19 MS. DOCTORS: Is there any way that we can make
20 copies since there aren't any additional copies of this
21 particular exhibit before for the petitioner, and we
22 would both like it?

23 MS. McFAWN: That can be done. Why don't we do it
24 at the conclusion of the hearing.

1 MR. KING: Are there any other questions for

2 Mr. Hulskotter?

3 MS. McFAWN: You stated that Central Can uses two

4 afterburners to control a portion of their coating

5 operations. Maybe you can answer this or maybe Central

6 Can can.

7 So I can get a good picture of the factory, is

8 there an afterburner dedicated to the spray line, and

9 then a second one dedicated to the lithography line?

10 MS. MLSNA: No. There is one dedicated to one of

11 the coating lines in lithography, and the other

12 afterburner handles the next three coating lines in

13 lithography. They are both in litho.

14 MR. KING: Did you identify yourself for the

15 record?

16 (Witness sworn.)

17 MS. MLSNA: My name is Dorian Mlsna. I am the

18 president of Central Can Company.

19 MR. HULSKOTTER: In the spray area, I think we are

20 using lower VOC content coatings.

21 MS. McFAWN: So, basically, that's how they achieve

22 compliance then?

23 THE HALL: Yes.

24 MS. McFAWN: Just for the record, in your

1 testimony, you often state, Mr. Hulskotter, that you
2 recommend when you say that, I recommended that the
3 adjusted standard be granted, I assume you are
4 submitting this document as representative of the
5 Agency?

6 MR. HULSKOTTER: Correct.

7 MR. KING: Are there any other witnesses?

8 MS. DOCTORS: The Agency has none.

9 MR. TECSON: Petitioner has none.

10 MR. KING: Well, in that case, would anyone like to
11 make any closing statements?

12 MS. DOCTORS: I have nothing further to add.

13 MR. TECSON: I would just say that we do request
14 the adjusted standard be granted, and that Central Can
15 believes it is submitting itself to VOC limitations that
16 are as strict or stricter than the ones that it is
17 currently subject to under the miscellaneous metal parts
18 area, and that it will continue to be well under the
19 aggregate amount of allowables of VOM.

20 Thank you for your time and patience.

21 MR. KING: All right. Thank you.

22 I think that will conclude this hearing.

23 Are you anticipating filing any briefs on this?

24 MS. DOCTORS: No.

1 MR. KING: All right then. I thank everyone for
2 their input, and hopefully we will get a response on
3 this in the not-too-distant future.

4 MR. TECSON: May I ask one question?

5 MR. KING: Sure.

6 MR. TECSON: Is there any procedure -- and forgive
7 me for being ignorant on this -- where we should or
8 could ask for any type of expedited review or is
9 everything done in the same time frame? I only ask
10 because this has been on the docket since 1994.

11 MS. DOCTORS: I would like add that I would second
12 that request. I know it has been on the docket for a
13 long time, and they also have a CAT permit pending, and
14 they are part of the trading rule, aren't you also?

15 MR. TECSON: (Indicating)

16 MS. DOCTORS: And it would really expedite the
17 Agency's issue, I think, of the CAT permit if we have
18 the adjusted standard in the trading program, so there
19 are some other things that they have -- they are also
20 complying with.

21 MR. KING: Usually that's done through filing a
22 motion for expedited consideration.

23 MS. DOCTORS: Would you like us to file a joint
24 one?

1 MR. KING: Put what you just said in a document and
2 file that with the Board.

3 MR. TECSON: And I can do that post-hearing?

4 MR. KING: Yeah.

5 MS. McFAWN: Your comments today are duly noted.

6 We have been watching you. You know, it's got an old
7 docket number, and it's been on my docket for a long
8 time. So -- and you are probably looking at the three
9 people that will do the draft to make the recommendation
10 to the Board as a whole.

11 So, by being here today, we are up to speed on it,
12 and you can look forward to a response. I -- at least
13 internally, there will be one, and the Board is usually
14 most amenable to your request.

15 MR. TECSON: Great. Thank you.

16 MR. KING: That concludes the hearing. Thank you
17 everyone.

18 (Hearing concluded.)

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1 IN WITNESS WHEREOF, I do hereunto set my

2 hand and affix my seal of office at Chicago, Illinois

3 this ____ day of ____, A.D., 19__.

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11 _____
Notary Public, Cook County, Illinois

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