ILLINOIS POLLUTION CONTROL BOARD
May 9, 1986

DUPAGE PUBLICATIONS CO.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 85-44, 85-70
	)	85-130
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board as three separate permit appeals filed on behalf of DuPage Publications, Co. (DuPage) on April 9, 1985 (PCB 85-44), May 7, 1985, (PCB 85-70) and August 26, 1985 (PCB 85-130). These cases were consolidated on the motions of DuPage. A hearing was held on October 22, 1985 at which an agreed stipulation of facts and fourteen exhibits were presented in lieu of testimony. Briefs were filed on November 26, 1985 and January 17, 1986 by DuPage and on January 6, 1986 by the Illinois Environmental Protection Agency (Agency).

DuPage owns and operates a printing and bindery operation in West Chicago, DuPage County, Illinois. In its printing operations, DuPage uses six heatset web offset presses in which feed roll paper is printed with overlay colors on both sides of the web by several individual sections of each press. Fountain solutions are used to wet non-image areas where ink is not used. These solutions consist primarily of water but also contain a small amount of gum arabic and may contain traces of ethylene glycol but do not contain isopropyl alcohol. A print web is then dried in natural gas-fed dryers to evaporate the ink solvent. The print web from dryer passes over chilled rolls to cool and set the ink. The cooled web is then folded and set into signatures - printed, folded sheets. (Pet. Brief pp. 1-3).

DuPage uses three ink types on the heatset web offset presses. These include insert process inks, cover process inks and commercial inks. The inks used are approximately 33% solvent on a weighted average basis. The solvents are mainly aliphatic hydrocarbons from straight run or hydrotreated middle distillates. The ink solvents have a vapor pressure of 0.0007 kPa. (0.0010 psia) or less at 68 F. DuPage's ink solvent is not a volatile organic material as that term is defined in Section 211.122 and DuPage's heatset printing ink solvent is not a photochemically reactive material as defined in Section 211.122. (Stip. pp. 2-3).

On January 10, 1985, the Agency granted permits to DuPage to operate heatset web offset press nos. 1 through 4. Special Condition No. 1 in each permit established separate organic material emission limits for each press based on certain emission rates and hours of operation. Special Condition No. 2 in each permit established an organic material emission limit of 145.3 tons/year from all four presses combined. DuPage submitted a request to the Agency on March 12, 1985, to delete these Special Conditions from the operating permits. The Agency denied the request stating that the annual emissions limits are necessary to demonstrate that emissions from press nos. 1 through 4 are below the level at which press nos. 4 and 5 would be subject to 35 Ill. Adm. Code 203: Major Stationary Sources Construction and Modification. DuPage appealed this decision to the Board on May 7, 1985 (PCB 85-70).

On March 5, 1985, the Agency granted DuPage a permit to construct a catalytic afterburner for press no. 5 and to operate nos. 1 through 7 of the operating permit for press no. 5 contained provisions concerning the construction, operation, testing and monitoring of the afterburner. Special Condition No. 9 established an organic material emissions limit of 39.9 tons/year to keep emissions below the level at which the Agency believes 35 Ill. Adm. 203, Subpart B would apply. DuPage appealed the imposition of these conditions to the Board on April 9, 1985 (PCB 85-44).

Also, on March 5, 1985, the Agency issued a Notice of Incompleteness to DuPage concerning its application for a joint construction and operating permit for press no. 6. On July 22, 1985, the Agency denied the permit on the grounds that press no. 6 together with other new equipment at the facility may be subject to 35 Ill. Adm. Code 203 and requirements of this part were not addressed in DuPage's application. DuPage appealed this denial to the Board on August 26, 1985 (PCB 85-130).

The central issue in this permit appeal is the applicability of the Board's regulations in Part 203 to DuPage's six heatset web offset presses. Part 203 contains the rules which are commonly referred to as the New Source Review (NSR) rules and, in effect, constitute a preconstruction review program for any construction of a major stationary emission source in a non-attainment area.* A major stationary emission source is defined as; 1) any stationary emission source of air pollutants which emits, or has the potential to emit, 100 tons/year or more of any pollutant; 2) any physical change at a stationary emission source which itself qualifies as a major stationary emission source; and 3) the reconstruction of an emission source if the fixed capital costs of new components exceeds 50% of the fixed capital costs of

* These rules were adopted on July 14, 1983 in R81-16(B) which implement Section 9.1(d) of the Environmental Protection Act.

an entirely new stationary source. 35 Ill. Adm. Code 203.206. A major modification of an emission source is any physical change or change in operation of a stationary source which creates a significant net emission increase of any pollutant. Section 203.207.

DuPage's facility is located in DuPage County which is designated as non-attainment for ozone. Since ozone is formed in the atmosphere, the Board's rules are designed to control the emission of those contaminants which lead to the formation of ozone. Specifically, the Board's NSR rules provide that a major stationary emission source that is major for organic material shall be considered major for ozone. Section 203.206. The Board's NSR rules also provide that any net emissions increase that is significant for organic material shall be considered significant for ozone. Section 203.207. The level for which a net emissions increase is considered significant for ozone is 40 tons/year of organic material. Section 203.209(e).

DuPage argues that either the Board lacks the statutory authority to regulate organic materials that do not lead to the formation of ozone and, therefore, the NSR rules are invalid as applied to DuPage; or, assuming arguendo that the Board has the statutory authority, the regulation of organic materials which do not lead to the formation of ozone was arbitrary and unreasonable and, therefore, the rules are invalid as applied to DuPage. In support of its first argument, DuPage asserts that the legislature authorized the Board to establish a permit program in accordance with Section 173 of the Clean Air Act which shall apply to new and modified sources of certain pollutants, including those which contribute to the formation of ozone, in non-attainment areas. Pursuant to this authority, the Board was empowered to require new source review of those sources which emit criteria pollutants, or in the case of ozone, those sources which emit volatile organic compounds. Consequently, the Board overstepped its authority when it promulgated the NSR rules to cover many compounds which do not contribute to the formation of ozone. (Pet. Brief pp. 7-9).

In support of its second argument, DuPage asserts that the NSR rules to the extent they regulate new and modified sources of nonvolatile, non-photochemically reactive organic compounds are arbitrary and unreasonable because they are not reasonably related to the Board's own stated purpose of the NSR rules, namely, that they are intended to ensure that as-built or modified potentially large sources of air pollutants do not contribute to a region's air quality problems. Secondly, DuPage asserts that the NSR rules are also contradictory to the Board's own description of them in its Opinion in R81-16(B) which stated "the significant levels which are found at Section 203.209 are these listed at 40 C.F.R. 51.18(j)(1)(x) for 40 C.F.R. 61." Yet, 40 C.F.R. 51.18 defines significant levels of ozone as 40 tons per year of volatile organic compounds. 40 C.F.R. 51.18(j)(1)(v)(a). Thirdly, DuPage asserts that nothing in

either the Board's Opinion or in the record demonstrates that the Board even considered the propriety of a deviation from the federal provisions. Lastly, DuPage asserts that the Board's decision to require all major new and modified sources of any organic material to participate in the permit program was unreasonable in light of USEPA's position that although it has not developed a specific definition of volatile organic compound for purposes of non-attainment permit programs, it stresses that only volatile, photochemically reactive materials should be regulated. (Pet. Brief pp. 9-12).

The Agency responds to these arguments by asserting that going beyond the definition of organic material found in Section 211.122 would ignore the plain language of the Board's NSR rules. The Agency also contends that the Board's NSR rules are valid as applied to DuPage because DuPage's organic material emissions do lead to the formation of ozone in a non-attainment area even though they are neither volatile nor photochemically reactive as these terms are defined in Section 211.122. Lastly, the Agency responds to DuPage's "arbitrary and unreasonable" argument by asserting that DuPage's organic material emission attributable to its printing ink oils may contribute to ozone formation; that the distinction between "organic material" as found in Part 203 and the term "volatile organic compounds" used in 40 C.F.R. 51.18(j)(1)(v)(a) to describe significant annual net emissions increases is without import; that the Board considered all information before it when it decided to accept the term "organic material" rather than "volatile organic compounds" or "volatile organic material"; and, that USEPA has never considered the printing oils used in the heatset web offset printing industry not to be ozone precursors and in fact USEPA has recently notified DuPage that it considers DuPage to be a major source of volatile organic compounds. (Agency Brief pp. 8-20).

Part 203 is one segment of the State's overall ozone control strategy, along with Reasonably Available Control Technology (RACT) controls for existing major stationary sources, New Source Performance Standards (NSPS) for specially designated new sources and Inspection and Maintenance (I/M) for automobile emission systems. The common, and sole, focus of these various programs is the control of ozone precursors emitted to the atmosphere. The conceptual approach has been to control volatile organic material (VOM), which is generally presumed to be photochemically reactive, i.e., an ozone precursor. Thus, VOM, rather than non-volatile organic material is controlled because it is more likely to be emitted to the atmosphere and, therefore, available for photochemical reactivity. Certain VOM's that are of negligible photochemical reactivity are specifically excluded.

The Board defines VOM in terms of a material's behavior at a specific temperature and pressure. Sections 211.122 and 215.102. The Board also has a specific definition for "photochemical reactivity." Section 211.122. It is a matter of agreement in the instant proceeding that the ink solvents at

issue are neither VOM's or photochemically reactive, as defined in the Board regulations.

As DuPage points out, it would be inappropriate to adopt a regulatory control program for emissions of compounds that do not contribute to ozone formation under rules related to attainment of the ozone air quality standard. While such a regulatory control program would not necessarily be beyond the Board's authority, providing there was an adequate alternative basis for control, such as control of toxic air emissions, in the instant situation such an interpretation could be arbitrary or unreasonable. The Agency argues that ink solvents are ozone precursors and, therefore, are legitimately regulated under Part 203. However, based on the Agency Record, Stipulation of Facts and Exhibits, this proposition is not factually supported. The Agency cites two documents which are not in the record: The University of California at Riverside Report or Carter Report and a USEPA Administrative Order regarding the DuPage facility. The Board cannot rely on "facts" not in the record in making a determination. The record in the instant proceeding does support the proposition that the ink solvents are negligibility photochemical reactivity and that the solvents do not fall within the Board's definition of VOM or photochemically reactive. The Board notes, however, that the issue of whether heatset web offset ink oils are ozone precursors is a hotly contested issue and is currently being considered by the Board in R82-14, RACT III. At present, these compounds are not regulated under RACT rules.

The Board need not reach the issue of whether Part 203 is arbitrary or unreasonable as applied to DuPage because it can reasonably interpret the language at issue. Part 203 uses the language "organic material" (OM) rather than "volatile organic material" (VOM) in establishing the emission threshold for the new source review process. The ink solvents at issue do fall into the Board's definition of "organic material." Section 211.122. The Agency argues that the Board intentionally chose the stricter "OM" term after considering all options. However, the only reference to this language in the Board's adopting Opinion is in a reference to the federal language, which provides for a threshold based on volatile organic compound emissions 40 CFR 51.18(j)(1)(v)(a). The record of R81-16 seems to indicate that the terms "OM" and "VOM" were used interchangeably by the Agency. (R81-16(b), P.C. 17). Additionally, while OM is used rather than VOM, the quantities of emissions which establish the threshold for new source review is unchanged from the federal regulations to the Board's regulation. If the scope of the

regulation was intended to be broader than the federal language, a corresponding change in the quantity of emissions would be necessary.*

The Agency argues that the Board cannot look beyond the plain language of Part 203, citing Continental Grain v. Illinois Pollution Control Board, 131 Ill.App. 3d 838, 475 N.E.2d 1362 (1985). The Board believes its holding here is not inconsistent with the Continental Grain decision. In that case, the regulation specifically listed certain named townships as falling within the rule's applicability, and the court determined that, given the specifity of the listing, the Board's reliance on the record to increase the scope of the regulation by adding another township was arbitrary or unreasonable. Thus, the "plain language" controlled. However, the court, in Continental Grain, did not hold that the Board could never look beyond "plain language", no matter what the circumstances, and no matter what the consequences. Regulations for the control of ozone are not so specific. In this case, applying the language in a manner that increases the scope of the regulation beyond its clear purpose of controlling ozone formation could result in an arbitrary or unreasonable action by this Board. It is well established rule of statutory construction that when there is some ambiguity as to the language and there is a choice between an interpretation that will either validate a statute or render the statute invalid, the validating interpretation should be followed. This approach is particularly appropriate in interpreting regulatory language as well, given the Act's requirement that the Board's regulations be supported by, and based upon, a formal record. Therefore, Part 203 should properly be interpreted to regulate new major stationary sources or major modifications based on significant VOM emissions rather than OM emissions.

This interpretation would also provide a measure of consistency between RACT regulations and NSR regulations. While these programs do entail different regulatory approaches, they both utilize the same definitional terms and address the same problem - achieving the NAAQS for ozone, in non-attainment areas.

Therefore, the Board reverses the Agency's decisions regarding the DuPage facility. The matter is remanded to the Agency for permitting consistent with the Board's interpretations of applicable regulatory language.

*The Board also takes administrative notice of the Agency's proposed amendment of Part 203 in R85-20, which would change the threshold from organic material to volatile organic material emissions, in order to reconcile the definitions adopted in RACT II, to avoid "excessive stringency," and ensure conformity with federal regulations.

ORDER

The Board reverses the Agency's imposition of conditions in DuPage Publications' operating permits for press numbers 1 through 5 and the Agency's denial of an operating permit for press number 6 at DuPage Publications' facility located in West Chicago, Illinois. The matter is remanded to the Agency for permitting consistent with the accompanying Opinion.

IT IS SO ORDERED

Chairman J.D. Dumelle and Board Member R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9th day of May, 1986, by a vote of 5-2.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board