

ILLINOIS POLLUTION CONTROL BOARD
January 8, 1987

VAN LEER CONTAINERS, INC.,)
)
 Petitioner,)
)
 v.) PCB 85-227
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by B. Forcade):

I dissent from today's action. The primary issue in today's decision is whether the installation of add-on controls (an afterburner) would constitute an arbitrary and unreasonable hardship to Van Leer Containers, Inc. ("Van Leer"). There is no question that afterburners can bring Van Leer into compliance and that they are technically feasible for Van Leer to install. The sole hardship that is claimed relates to the expense associated with afterburners.

Factual information on the cost of afterburners is contained in the October 8, 1986, "Supplement to Facts" filed by Van Leer. At paragraph 2(a)(viii), on page 7, Van Leer asserts:

- (viii) The economic study of add-on controls is well under way. Preliminary estimates confirm this as an expense (sic) solution, i.e., \$4000 to \$9000 per ton in capital investment and \$3100 to \$2600 per year per ton in operating expenses.


This statement is in an unverified pleading and contains no factual support for its conclusions. At hearing, a witness for Van Leer testified the cost of an afterburner is in the range of \$500,000 (R. 16-17). To accurately appraise whether these costs are unreasonable, I would need more detail on construction and operating costs of the afterburner and the amount of volatile organic material (VOM) which would be destroyed. Only then could the cost per ton figure be given any weight. Since Van Leer did

not provide this information, I do not believe they have carried the burden of demonstrating arbitrary and unreasonable hardship and I cannot support the variance. I note that Van Leer's chief competitor has spend \$900,000 in capital expenditures for add-on controls and \$200,000 annually for gas (R. 57) and, by such efforts, has achieved compliance. Also, Van Leer is required, by this variance, to install add-on controls (afterburners) by December 31, 1987, if other options do not lead to compliance by that date. These two facts indicate afterburners are a viable economic option for Van Leer at the present time to reduce ozone precursors.

I am especially concerned by the Board's and the Illinois Environmental Protection Agency's ("Agency") cavalier treatment of the ozone problem in Northern Illinois, as expressed at page two, paragraph two of the majority opinion. The commands of the Clean Air Act are absolute and adamant. Compliance with the ozone standard must be achieved or substantial sums of federal funding will be at risk and new industrial growth will be curtailed. Illinois does not have a federally approved ozone State Implementation Plan (SIP) which will lead to compliance with the ozone standard. To secure federal approval and avoid sanctions, we must focus on additional VOM reductions. It is a woefully inadequate response for this Board or the Agency to focus on not causing "any increased problems." We must focus on actions which will substantially reduce the existing problems or incur the justifiable wrath of the United States Environmental Protection Agency, via the mechanism of SIP disapproval and the imposition of sanctions.

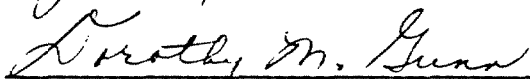
The majority opinion claims, at page two, "further, Van Leer must comply with its episode action plan which requires the reduction of emissions during periods of high ozone concentrations, thereby, mitigating any adverse health effects." The only requirement of Van Leer's Episode Action Plan (Pet., Ex. F) is that it completely shuts down within 60 minutes of notification of a red alert. The red alert level is 0.30 ppm ozone. Thus, so long as ozone concentrations remain at 0.29 ppm or lower, no emission reductions can be required of Van Leer. I believe there is consensus among health professionals that adverse health effects may be detected at ozone levels far below 0.29 ppm. In fact, recent studies show the 0.12 ppm level may need to be reduced to adequately protect public health. Thus, I believe the majority has totally ignored (or misstated) the potential health impacts of granting this variance.

Van Leer emits over 400 tons of VOM per year and, thus, is a very very large source. The record shows that, historically, Van Leer's efforts to control VOM emissions have been poor. Central Can has been using waterborne coatings since early 1984 (Pub. Ex. 1, pp. 12-13), while Van Leer hopes to complete the switch to waterborne coatings by March 30, 1987 (Order, par. 1). Central Can implemented afterburners in 1975 and 1983 (Pub. Ex. 1, p. 16), if all else fails, Van Leer must do so by December 31, 1987 (Order, par. 8). I do not find this record to be sufficient justification to excuse immediate compliance. Accordingly, I dissent.



Bill S. Forcade
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 15th day of January, 1987.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board