

ILLINOIS POLLUTION CONTROL BOARD
January 9, 1986

FEDDERS - USA,)
)
 Petitioner,)
)
 v.) PCB 85-5
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. JEFFREY C. FORT and MS. M. THERESE YASDICK; MARTIN, CRAIG,
CHESTER & SONNENSCHNEIN, APPEARED FOR PETITIONER; AND

MR. WILLIAM D. INGERSOLL and MS. SUSAN SCHNEIDER, ATTORNEYS-AT-
LAW, APPEARED FOR RESPONDENT.

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

This matter comes to the Board on a January 14, 1985, Permit Appeal filed by Fedders - USA ("Fedders"). Fedders seeks review of a December 10, 1984, decision by the Illinois Environmental Protection Agency ("Agency") denying Fedders application for an Alternative Control Strategy ("ACS") permit governing air emissions from its plant which makes room air conditioners. Hearing was held in Effingham on August 28, 1985. Briefs were filed on October 16, by Fedders and November 22, by the Agency.

Fedders operates a plant located in Effingham, Illinois. Effingham is a community of approximately 12,000 people located at the junction of Interstate 57 and Interstate 70, seventy miles south of Champaign, Illinois. Fedders' plant produces room air conditioners. The plant has approximately 750,000 square feet of floor space. Parts used in the construction of the air conditioners are painted on two Epon paint lines. There are three distinct components to this system, the flow coater chamber, the vapor chamber, and the bake oven. The flow coater is a completely enclosed area with no overspray as commonly known in a spray booth-type applicator. There are no atmospheric emissions from the flow coater chamber. The part to be coated is flooded with paint from nozzles on all sides and then transported to the vapor chamber.

In the vapor chamber, paint drippings are recovered with a goal of having no paint dripping off the parts at the time that the parts leave the chamber. Paint is recovered from the vapor chamber and recirculated to the flow coater. A low velocity, low temperature exhaust fan is operated from the chamber to minimize solvent loss. From the vapor chamber, parts enter the bake

oven. In the bake oven any remaining solvents are flashed off by evaporation. Parts remain in the bake oven for approximately ten minutes at 350 degrees F. A high velocity exhaust fan is used in the bake oven to avoid the risk of explosion.

The flow coat system applies a layer of acrylic epoxy paint to the parts in a single pass. The paint, which contains 4.669 pounds of volatile organic compounds (VOC) per gallon, must be diluted with solvent containing 7.424 pounds of VOC per gallon. Total VOC emissions from the paint line in 1984 were 176 tons. This also represents the projected actual emissions for future years.

Fedders, in its application to the Agency for an alternative control strategy permit under Part 202 of the Board's regulations (35 Ill. Adm. Code 202.101, et seq.), sought to receive credit for a reduction in VOC emissions from Fedders' conveyORIZED degreaser and Fedders' glue booth. Fedders proposed to reduce emissions from these two sources by using a water based glue in its glue booth and by eliminating degreasing of a substantial number of parts, thereby allowing Fedders to shut down its conveyORIZED degreaser.

In its December 10, 1984, letter, the Agency provided two reasons for Fedders' permit denial:

Section 202.201 requires the establishment of a single emissions baseline based on the lesser of actual or allowable emissions from each emission source. Fedders showed two baselines, one based on actual emissions (242 tons/year) and one on its interpretation of allowable emissions (186 tons/year). The Agency calculated an annual emission baseline of 80.1 tons year of organic material. Considering that the projected actual emissions are 176.35 tons/year from the paint line operation in 1984, and that the application fails to discuss a significant reduction in the number of units to be coated in subsequent years, the application does not show equivalence of emissions as required by Section 202.211.

* * *

The application also fails to demonstrate that the impact of the ACS is environmentally equivalent to that which would otherwise be achieved and maintained under existing requirements or required by Section 202.212. As stated in the Notice of Incompleteness dated July 12, 1984, this can best be done by showing that daily emissions under the ACS

will be equal to or less than an "emission baseline" evaluated for a single day. Fedders has not established such a "daily baseline." The Agency could set the daily baseline by dividing annual emissions by the number of operating days but the application does not address how emissions would remain under the daily baseline value.

Thus, this permit appeal raises two issues:

1. Has Fedders demonstrated that their annual projected emissions will be environmentally equivalent to the appropriate emissions baseline ?
2. Has Fedders demonstrated compliance with a daily emissions baseline?

Prior to a discussion of the merits, the Board must comment on the poor quality of the record provided by the parties. First, despite a Board Order to the contrary, the parties have comingled the variance case (PCB 83-47) and this permit appeal, leaving the Board to sort out what applies to each proceeding. Again, the Board points out that the standard and burden of proof in a permit appeal are different from a variance proceeding:

The sole question before the Board in a review of the Agency's denial of a permit is whether the petitioner can prove that its permit application as submitted to the Agency establishes that the facility will not cause a violation of the Act. (Ill.Rev.Stat.1979, ch. 111-1/2, par. 1040).

* * *

When reviewing the Agency's denial of a permit or imposition of any conditions, "the decision of the Board shall be based exclusively on the record before the Agency including the record of the hearing, if any * * *." Ill.Rev.Stat.1979, ch. 111-1/2, par. 1040; Peabody Coal Co. v. Environmental Protection Agency (1979), 35 Ill.P.C.B.Op. 380.

IEPA v. IPCB, 118Ill.App.3d 772, 455 NE2d 188 (1st Dist., 1983).

At hearing, after concluding the variance case, the parties stipulated to the introduction of "any evidence that was introduced in the variance proceeding that is relevant to the Board's review in PCB 85-5, the review of ACS permit application..." (R. 208). This approach necessarily leaves the Board without information concerning what portion of the

preceeding 200 pages of testimony was before the Agency when the permit decision was made.

Second, the outcome of this matter depends on the application of regulations in Part 202 and 215 to specific facts relating to Fedders past and future operations, production and emissions. Neither party has made a lucid argument, in one document, that existing regulations applied to facts in the record lead to the result they advocate. Again, the Board is left to sort through the documents to find facts and theory leading to calculations supporting one outcome or another. Finally, the record is complicated by Fedders claim of Trade Secret relating to certain information necessary for a resolution of baseline emissions. While the claim of trade secret in no way affects the outcome of this case, it precludes the Board from providing a detailed explanation in this Opinion of the problems associated with Fedders' calculation of baseline emissions. The Board notes that the claim is obviously overbroad in that it covers air emissions data and calculations thereof which cannot be maintained as confidential under the Clear Air Act and Environmental Protection Act. Fedders has yet to provide a justification for a claim made over a year ago, and the Agency has neither requested a justification nor ruled on the issues. Because of this "claim" the Board's discussion of the difficulties with the calculation of allowable emissions must be necessarily vague.

Board regulations at 35 Ill. Adm. Code Part 202 allow facilities that are unable to comply with all substantive air emission regulations to receive an ACS permit under certain circumstances. Generally, this is demonstrated in a permit application by showing that emissions for which a permit is sought will be less than an emissions baseline. 35 Ill. Adm. Code 202.110. In this way, emissions at one source governed by the ACS permit may be higher than allowable while emissions at other sources are lower than allowable - resulting in environmental equivalence. The environmental baseline is defined as the lesser of prior actual emissions or allowable emissions. Section 202.201. Both actual emissions [Section 202.104] and allowable emissions [Section 202.107] are defined and procedures are given for their calculation. Both calculations are to consider using hours of operation, production rates and types of materials.

Fedders claims an emissions baseline of 186 tons/year derived from allowable emissions; the Agency claims an allowable emissions baseline of 80.1 tons/year. Both parties seem to agree that projected paint line emissions under the ACS permit are 176 tons/year. As the difference in allowable emissions is in fact the central controversy, further evaluation would be required to determine which value is accurate. In evaluating each claim for allowable emissions baseline, the Board would anticipate finding a calculation for each of the three processes (paint line, adhesive, degreaser). That calculation would include applicable

regulatory restrictions on emissions, operating rates and hours of operation. The calculation, in theory, would result in the number advocated by each party. The Board finds no such calculation from either party.

Fedders statement of allowable emissions for the paint line for the 1984 base year shows 55 tons. A footnote states "The quantity [SIC] attributed to Fedders by the Economic Impact Statement before the Illinois Pollution Control Board attributed 287 tons of VOC to the Epon paint line and a forecasted reduction of 232 tons." Not only does Fedders fail to provide a calculation of legally allowable limits, they fail to even specify which Economic Impact Statement. Similar difficulties exist when the Board attempts to understand Fedder's calculation of allowable emissions for the degreaser and glue operations. There are no calculations involving regulatory limits and operating conditions. Theoretically, 35 Ill. Adm. Code Part 215 Subpart E or Section 215.301 could apply to one or more of these operations, neither are discussed by the record.

Additionally, the Board notes two conceptual difficulties with Fedder's calculations. First, calculations of future paint line emissions seem to be based on calculations involving 8 hours per day operation while emission reductions at the glue and degreaser line appear to be based on 16 hrs/day. Since those numbers are compared to determine compliance, they must either be based on the same operational hours or the Board must be given some explanation for the discrepancy. Second, paint line emissions are based on paint usage from the first portion of 1984 (January 1 to some unknown date in July) times a factor of 1.5 to account for annual emissions. However, degreaser operations present data on solvent usage collected over the same calendar period but are then multiplied by a factor of 2. If two different factors are used in projecting annual production figures from a specific time frame, it must be explained to be accepted.

In short, the Board finds that Fedders has failed to demonstrate in its permit application or on appeal that it would achieve environmental equivalence with an appropriate annual emissions baseline.

Concerning the "daily" emissions baseline, the parties arguments are even less developed. Both parties argue that the record demonstrates that Fedders would or would not operate on an eight hour day. However, neither party presents a factual argument demonstrating that an eight or sixteen hour work day results in compliance or noncompliance with daily environmental equivalence. In the absence of such a demonstration, a Board finding on the number of hours Fedders operates is meaningless. The Board finds that Fedders has failed to demonstrate compliance with environmental equivalence for a daily emissions baseline.

The parties to this proceeding request the Board to resolve significant policy and factual issues, including:

1. Whether the Agency decision to deny a permit was improperly based on pounds per gallon of coating solids rather than pounds per gallon of coating.
2. Whether the paint nozzle or the entire flow coater is the "applicator" in a flow coat paint line.
3. How is the transfer efficiency for a flow-coat paint line determined.

Neither party explicitly demonstrates how a decision on these issues would affect the compliance status of Fedders paint line operation.

Under Section 40 of the Environmental Protection Act, the petitioner in a Permit Appeal has the burden of proof to demonstrate compliance. The Board finds that Fedders has failed to demonstrate compliance with permitting requirements of 35 Ill. Adm. Code Part 202. Accordingly, the decision of the Agency to deny the permit is affirmed.

This Opinion constitutes the Board's findings of fact and conclusions of law on this issue.

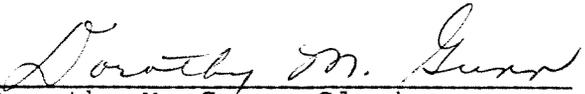
ORDER

The decision of the Illinois Environmental Protection Agency denying an ACS permit to Fedders - USA is affirmed.

Board Member Walter J. Nega dissented.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Opinion and Order was adopted on the 9th day of January, 1986, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board