ILLINOIS POLLUTION CONTROL BOARD
June 13, 1974

ENVIRONMENTAL PROTECTION AGENCY, Complainant, vs. RHEEM MANUFACTURING COMPANY, a California corporation qualified to do business in Illinois, Respondent.	)	PCB 73-36

Mr. Michael A. Benedetto, Jr., Assistant Attorney General, on behalf of Complainant;
Mr. Clifton A. Lake, Attorney, on behalf of Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

This matter comes before the Board on the complaint of the Environmental Protection Agency initially filed on January 26, 1973, and amended several times thereafter. The parties have, in order to avoid the further expense of a contested hearing, agreed on Stipulation of Facts which they feel will enable the Board to make such disposition of this case as it deems proper. The Stipulation of Facts was entered into the Record of the public hearing on this matter held on November 14, 1973.

Rheem Manufacturing Company is the owner of a manufacturing facility located at 7600 South Kedzie, Chicago, Cook County, Illinois. Said facility consists of a Container Division and a Home Products Division.

The Container Division employs two (2) lithographic ovens and three (3) paint-baking ovens which remove solvents from certain products and vent said solvents directly to the atmosphere without the use of any pollution control device.

The Home Products Division employs three (3) baking ovens which remove solvent from certain products and vent said solvents directly to the atmosphere without the use of any pollution control device and six (6) porcelain spray booths, the emissions from all of which are controlled by baffles and additionally in the case of booths Nos. 2 and 3 by a cyclone collector. In the porcelain spray booths a water suspension of porcelain is sprayed on formed sheet metal household appliance bodies. Subsequent to the spraying operation the porcelain is fused to the sheet metal in a high-temperature oven.

The initial complaint filed by the Agency on January 26, 1973, alleged that Respondent operated its lithographic and paint-baking ovens in violation of the particulate emission limitations of Rule 3-3.111 of the Rules and Regulations Governing the Control of Air Pollution. Specifically, the emissions were alleged to consist of solvent removed from various coatings during the manufacturing process by the application of heat in closed ovens. In response to the Agency's complaint and in preparation of its defense, Rheem employed Air Resources, Inc., a firm of consulting engineers, to perform stack tests on the production facilities alleged in the complaint to be in violation of the particulate regulations. Tests were in fact conducted in early March, 1973 by Air Resources stack-testing engineers. The results of those tests demonstrated conclusively that the lithographic and paint-baking oven emissions at Rheem range from 300% to 800% below the maximum particulate emission levels specified by Rule 3-3.111 (Stipulation Ex. I, p.9). As noted at page 3 of the Stipulation of Facts, the Agency has no quarrel with the test methods employed by Air Resources.

The Environmental Protection Agency admits (Complainant's Brief, p.3) that the stack tests conducted by Respondent on March 5-8, 1973, and as contained in Exhibit I, appear to resolve the issue of particulate emissions from the paint-baking ovens. This is particularly true in light of the Board's recent decision in Environmental Protection Agency v. R. R. Donnelley, PCB 72-410, - 472, which involved a similar drying operation. The Board finds no violation of Rule 3-3.111 as regards Respondent's lithographic and paint-baking ovens.

After further investigation of Respondent's facility, an Amended Complaint was filed on May 2, 1973. It included the aforesaid paint-baking oven violation and in addition thereto charged a violation of Rule 3-3.111 due to Rheem's porcelain spray booths. A violation of Rule 3-2.110 of the Rules and Section 9(b) of the Environmental Protection Act was also charged due to commencement of operation of a paint spray booth which had been significantly modified without a permit first having been obtained.

Finally, on June 5, 1973, a Second Amended Complaint was filed by the Environmental Protection Agency charging all the violations previously alleged and, in addition, charging Rheem with submitting applications for permits for porcelain spray booths which contained certain unrepresentative numbers in violation of Rule 103(b)(3) of the Pollution Control Board Air Pollution Control Rules and Regulations.

Violations of Rule 3-2.110 of the Rules and Section 9(b) of the Environmental Protection Act have been clearly shown as is evidenced by Page 4 of the Stipulation of Facts. Rheem admits that a paint spray booth located in the Container Division, and identified as existing from Stack Number 129, was "significantly modified" on or about November, 1972 without a permit as is required.

In mitigation, Rheem argues that it has demonstrated serious and good faith efforts to comply with the Board's permit regulations in submitting voluminous operating permit applications on December 8, 1972 and that the mere fact that one spray booth out of a total of 280 emission sources, not alleged here to be in violation of any emission regulation, was modified without a construction permit, is inconsequential.

The Environmental Protection Agency contends that the Stipulation of Facts demonstrates adequately that all of Rheem's porcelain spray booths (with the exception of Number 5) have been in violation of Rule 3-3.111 of the Rules. However, since Rheem has installed control facilities on all of said booths, the Environmental Protection Agency, in order to avoid a situation similar to that which arose in Johnson and Johnson v. EPA, PCB 73-71, limits its argument, and requests the Board to limit its decision to a finding of a violation due to porcelain spray booths 2 and 3.

The porcelain spray booths are six in number and are used in the spraying of a porcelain water slurry onto metal home water heater body parts. Following the spraying operation the wet porcelain adhering to the metal is fused under high temperature to form an impervious coating. Particulate emissions from the porcelain spray booths were controlled at the time the complaint was filed by baffling in the booths and, in the case of booths Nos. 2 and 3, by a cyclone collector device as well.

The basic dispute between Rheem and the Agency in this case goes to the application of the process weight regulations to Rheem's porcelain spray booth operations. For purposes of this case, "process weight" is defined in Rule 1-1 of the Illinois Air Pollution Control Board Regulations as:

> The total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight but liquid and gaseous fuels and combustion air will not.

As recited above, theoperation of the spray booths consists of the application of a porcelain slurry to formed sheet metal appliance bodies by a spraying operation. Rheem contends that since both the porcelain and the bare sheet metal are unquestionably "materials introduced" into the spray booths, their combined weight is the "total weight" contemplated by the definition of "process weight" set out above.

As Exhibit No. 5 indicates, even accepting Rheem's definition of process weight rate which includes the weight of the metal parts sprayed, actual emissions from spray booths 2 and 3 are 7.10 lbs/hr. This figure exceeds the maximum allowable rate of 6.806 lbs/hr. and hence a violation is shown.

Although it is not necessary to the determination of a violation in the instant cause, we note that the weight of the formed sheet metal appliances which are coated in Respondent's porcelain operation cannot be included in process weight emission calculations in the absence of a showing that said formed metal contributes to the total emissions. This position is in conformity with the general theory and philosophy stated in E. I. DuPont v. EPA, PCB 73-411 wherein the process weight issue was exhaustively treated.

Since Complainant has expressed concern as regards the impact of Johnson and Johnson v. EPA, PCB 73-71 upon the instant cause, we emphasize that our decision in PCB 73-71 was explicitly confined to the special facts of that case. (See Opinion dated July 19, 1973).

In mitigation, Respondent argues that the extent that the combined emission from booths Nos. 2 and 3 exceeds the allowable emission is de minimus, especially when one considers how far below the maximum allowable emission the remaining booths are operating.

The remaining permit count is quite unique and goes to an alleged violation of Rule 103(b)(3), charged to arise from Rheem's submission of erroneous data in an operating permit application for its porcelain spray booths. The subject permit application was denied by the Agency. Respondent's objection to the inclusion of this charge in the Second Amended Complaint was taken with the case. As a matter of law, Rheem contends that Rule 103 by its terms cannot be the basis for any violation other than construction or operation without a required permit. We agree. The charge is dismissed.

Although Rule 103 does not provide a remedy in this situation, we note that the Act does provide for criminal sanction in a court of law if false information was submitted "knowingly." Section 44 of the Environmental Protection Act specifies that it is a Class A misdemeanor to knowingly submit false information under the Act or regulation. That action is not for us to decide.

In summary, we find that Respondent has violated Rules 3-2.110 and 3-3.111 and Section 9(b) of the Act for which a penalty will be assessed.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that, for the violations found herein, Respondent shall pay to the State of Illinois the sum of $1,000 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board certify that the above Opinion and Order was adopted on this 13th day of June, 1974 by a vote of 4-0.

Christan L. Moffett