

JUL 07 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R04-20
CLEAN-UP PART III)	(Rulemaking – Air)
AMENDMENTS TO 35 ILL.)	(Consolidated with R04-12
ADM. CODE PARTS 211,218 AND 219)	Rulemaking – Air)

PC#6

PROOF OF SERVICE

I, the undersigned, certify that I have served the attached First Notice Proposed Rule Comments of Smurfit-Stone Container Enterprises, Inc. upon:

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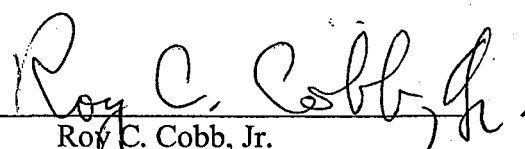
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by depositing said documents in the United States Mail, postage prepaid, in Clayton, Missouri, on July 6, 2005



Roy C. Cobb, Jr.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

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Pollution Control Board

IN THE MATTER OF:)	
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CLEAN-UP PART III)	R04-20
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FIRST NOTICE PROPOSED RULE
COMMENTS OF
SMURFIT-STONE CONTAINER ENTERPRISES, INC.

Smurfit-Stone Container Enterprises, Inc. (“Smurfit-Stone”), successor by merger to Jefferson Smurfit Corporation (U.S.), is submitting these comments on the First Notice Proposed Rule in Rulemaking R04-20, which has been consolidated with Rulemaking R04-12. Our comments are addressed to the proposed changes relating to capture efficiency testing.

BACKGROUND

Smurfit-Stone incorporates by reference this portion of the “Post-Hearing Comments of Jefferson-Smurfit Corporation (U.S.),” which is already part of the record in this rulemaking.

CAPTURE EFFICIENCY TESTING PROPOSAL

As indicated in its earlier comments, Smurfit-Stone has focused on the proposed rule changes that would expressly allow the use of all methods and protocols approved by U.S. EPA to test VOM capture efficiency. Smurfit-Stone appreciates the Board’s acceptance and consideration of its earlier Post-Hearing Comments and the changes that the Board has made in the IEPA’s proposal in response to concerns raised by IERG and our company. We continue to strongly support giving IEPA and the regulated community the widest possible range of options for demonstrating capture efficiency.

Language Proposed by Smurfit-Stone

For the convenience of the Board, Smurfit-Stone repeats here the language that we proposed to be adopted in Section 218.105(c)(2) (with equivalent language in Section 219.105(c)(2)), with changes from Illinois EPA’s proposal in the Errata Sheet, Hearing Exhibit 2, shown by ~~strikethrough~~ to show deletions and underlining to show additions.

The capture efficiency of an emission unit shall be measured using one of the protocols ~~given~~referenced below. Appropriate test methods to be utilized in each of the capture efficiency protocols are described in Appendix M of 40 CFR 51 and in USEPA’s “Guidelines for Determining Capture Efficiency” incorporated by reference at Section

~~218.112. Any error margin associated with a test method or protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process or equipment configuration, then an alternative capture efficiency protocol may be used, pursuant to the provisions of 218.108(b) of this Part. For purposes of determining capture efficiency using a an alternative protocol in USEPA's "Guidelines for Determining Capture Efficiency," but not in Appendix M to 40 CFR Part 51, sources shall satisfy the data quality objective (DQO) or the lower confidence level limit (LCL) statistical analysis methodologies as presented in USEPA's "Guidelines for Determining Capture Efficiency." incorporated by reference at Section 218.112 of this Part. LCL can be used to establish compliance with capture efficiency requirements. For purposes of establishing emission credits for offsets, shutdowns, trading, and compliance demonstrations arising in enforcement matters, the DQO must be satisfied.~~

First Notice Proposal: 218.105(c)(2)

In its First Notice Proposed Rule, the Board has moved the discussion of the DQO/LCL protocols to Subparagraph 218.105(c)(2)(E). Smurfit-Stone concurs that this is appropriate. Smurfit-Stone also believes that the language the Board has proposed in 218.105(c)(2) accomplishes the intended purpose behind some of our other suggested changes in the language proposed by IEPA. Hence, we generally approve the Board's proposed language in 218.105(c)(2).

However, Smurfit-Stone questions two aspects of the language proposed for 218.105(c)(2). First, in its earlier comment, Smurfit-Stone requested that the Board delete the sentence:

"Any error margin associated with a test method or protocol may not be incorporated into the results of a capture efficiency test."

Smurfit-Stone asks the Board to reconsider our earlier request and delete this sentence from the final rule on the ground that it is both unnecessary and unclear. Every test method and protocol has some margin of error. If there is a general rule about use of margins of test error, it should apply here. If there is no such general rule, we do not believe that including such a rule as an incidental matter is appropriate here. If the intent of the statement is that a result of $93\% \pm 5\%$ cannot be represented as 98%, or that a measured concentration of $200 \text{ ppm} \pm 40 \text{ ppm}$ in a gas stream cannot be represented as either 160 ppm or 240 ppm, we believe no statement to this effect is necessary since either would be an obvious misrepresentation. But if the statement is not limited to this, what does it mean? Does it mean that a test report cannot include an estimated or calculated margin of error? Is it the intent that a party can never raise the margin of error of a test in enforcement proceedings? We do not see a clear reason for including such a statement in a subsection about testing capture efficiency and believe that in the absence of such a reason, it is likely to be confusing and subject to misinterpretation. Hence, we request that this sentence be deleted, or, if not, that it be rewritten so that the intent is clarified and limited.

A second point raised in our earlier comment was the suggested addition of "or equipment configuration" at the end of the phrase "If these techniques are not suitable for a particular

process ...” Our intent was to make clear that the suitability of a particular test method or protocol might depend not only on the type of process involved, but also on the configuration of the equipment to be tested at a particular facility. We intended to correct a potential ambiguity in the term “a particular process,” i.e., that it be clear that even though the type of process, for example, rotogravure printing, might be generally suitable to one or more of the listed test methods or protocols, the specific configuration of the equipment at a facility might make them unsuitable. We realize that the words “a particular process,” if interpreted reasonably, should include such a consideration of facility specific factors, but we were striving to avoid any possible misinterpretation in this respect. We therefore again ask the Board to consider this requested addition.

First Notice Proposal: 218.105(c)(2)(E)

We believe that the Board’s changes have generally addressed the concerns raised in our earlier comment. Our remaining concern, as pointed out in our earlier comment, is with the next-to-last sentence in the Board’s First Notice proposed 218.105(c)(2)(E):

“Where capture efficiency testing is done to determine emission reductions for the purpose of establishing emission credits for offsets, shutdowns, and trading, the LCL protocol cannot be used for these applications.”

In our earlier comment, we discussed what we believe is the clear meaning of this statement. However, we also raised concerns that IEPA apparently had a completely different interpretation that would prevent a facility from using an LCL to estimate VOM emissions even if these were not being used to establish a baseline. We believe the Board has addressed these concerns in its direction on page 23 of its Opinion and Order:

“As for the language on ‘establishing’ emission credits for offsets, shutdowns, and trading, the Board directs IEPA to specifically address Smurfit’s contention that the LCL could be used to calculate actual seasonal emissions, just not the baseline for ERMS. The Board further directs IEPA to specifically address IERG’s concerns whether and when *additional* testing would be required.”

It is our view that the language in the Seitz memo and EPA guidance, both in its literal words and in its logical interpretation, only limits use of the LCL for establishing an emission baseline; it does not prevent an LCL being used to calculate seasonal emissions.

Requested Action

We appreciate the Board’s reasoned consideration of the record in this rulemaking, including our earlier comments. Smurfit strongly supports giving Illinois EPA and facilities in Illinois the widest possible range of methods to demonstrate capture efficiency without case-by-case SIP revisions. Smurfit agrees substantially with the language in 218.105(c)(2) and 218.105(c)(2)(E) that the Board has proposed in its First Notice Opinion and Order.

However, for the reasons stated above, Smurfit-Stone requests that the Board adopt the following language in Sections 218.105(c)(2) and 218.105(c)(2)(E) (with equivalent language in Section 219.105(c)(2) and 219.105(c)(2)(E)). Changes from the Board's First Notice proposal are shown by ~~striketrough~~ to show deletions and underlining to show additions.

218.105(c)(2)

The capture efficiency of an emission unit shall be measured using one of the protocols given below. Appropriate test methods to be utilized in each of the capture efficiency protocols are described in Appendix M of 40 CFR 51 incorporated by reference at Section 218.112. ~~Any error margin associated with a test method or protocol may not be incorporated into the results of a capture efficiency test.~~ If these techniques are not suitable for a particular process or equipment configuration, ~~then~~ an alternative capture efficiency protocol may be used, pursuant to the provisions of 218.108(b) of this Part.

218.105(c)(2)(E)

No change proposed, but we request that the Board make clear that there is no restriction on the use of an LCL capture efficiency to calculate actual seasonal VOM emissions.

Smurfit-Stone respectfully requests that the Board consider these comments and that the final rule language adopted by the Board be revised to be consistent with these comments.

Respectfully submitted,

Smurfit-Stone Container Enterprises, Inc.

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Dated: July 6, 2005