ORIGINAL

STATE OF ILLINOIS)
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COUNTY OF C O O K)

BEFORE THE POLLUTION CONTROL BOARD

OF THE STATE OF ILLINOIS

IN THE MATTER OF:	
OMNIBUS CLEANUP OF THE VOLATILE ORGANIC MATERIALS RACT RULES APPLICABLE TO OZONE NONATTAINMENT AREAS: AMENDMENTS TO 35 ILL. ADM. CODE PARTS 203, 211, 218 AND 219.	R93-9 (Rulemaking)

The following is a transcript of a hearing held in the above-entitled matter, at 100 Weat Randolph Street, Chicago, Illinois, on the 7th day of May, 1993, A.D., commencing at the hour of 10:00 o'clock a.m., Ms. Diane O'Neill, Hearing Officer, presiding.

PRESENT:

Mr. William Forcade,
Board Member.

APPEARANCES:

Ms. Kathleen C. Bassi
Associate Counsel
Air Pollution Control
Division of Legal Counsel
2200 Churchill Road
Springfield, Illinois 62694

appeared on behalf of the IEPA;

Members of the Public.

I N D E X

E X H I B I T S

HEARING OFFICER O'NEILL: This is a public hearing held by the Pollution Control Board in Docket Number R93-9, "Major stationary sources construction and modification," 35 Illinois Administrative Code 203; "Definitions and general provisions," 35 Illinois Administrative Code 211; "Organic material emission standards and limitations for the Chicago area," 35 Illinois Administrative Code 218; and, "Organic material emission standards and limitations for stationary sources," 35 Illinois Administrative Code 219.

I am Diane O'Neill. I am the hearing officer for the hearing today. And seated to my right is Mr. Bill Forcade, the Board Member at the hearing.

The Agency has filed its proposed amendments with the Board on March 16, 1993, pursuant to Section 28.5 which provides a fast-track rulemaking for the Clean Air Act Amendments.

The Board accepted the proposal

for first notice on March 25, 1993, and the proposed amendments were published in the Illinois Register on April 9, 1993.

The Board will proceed with this procedure according to the provision in Section 28.5.

The act provides that only the Agency will present testimony at the first hearing. However, the Agency's witnesses will be available for questioning by anybody at the hearing today.

And there may be, if requested, a second hearing for anybody to present their own testimony.

If you wish to ask questions I ask that you identify yourself for the record. And as this is a rulemaking and not a contested case, all relevant not duplicative information will be accepted.

I would just like to note for the record that there were two difficulties that were encountered prior to this hearing. The

first matter has to do with some pages that were omitted from the proposal as filed with the Board. These pages were apparently lost during the copying process, and they have been published in the Illinois Register on April 23, 1993 as a correction.

And the Board also issued an order on April 22, 1993 explaining the mixup.

The second matter has to do with the filing of the prefiled testimony. For some reason the Agency was given a copy of the notice list instead of the service list and so they served copies of the prefiled testimony to everyone on the notice list.

There also were two people whose names are on the service list who are not on the notice list, and they were subsequently given copies of the prefiled testimony, but it did meet with the scheduled deadline.

However, the Board believes that there is no prejudice from these matters and will continue to proceed according to the

schedule given out in Section 28.5.

So with that, if the Agency would like to proceed.

MS. BASSI: Thank you.

My name is Kathleen Bassi. I am associate counsel for the Illinois Environmental Protection Agency, assigned to the Bureau of Air.

With me today is Christopher Romaine, who will identify his credentials during his summary of his testimony.

I would like to summarize our proposal, briefly.

We filed dockets R91-7 and R91-8 which proposed RACT rules for the Chicago area in R91-7 and the Metro East area in R91-8 in response to the Clean Air Act requirements as it was amended in 1990.

We made the FIP submittal of those rules in September of 1991. USEPA gave us a response or an evaluation of our FIP submittal on May 8, 1992.

In that response, they noted a certain number of items that they considered deficiencies in the rules as they had been adopted.

As a result of that, they have not yet published approval of the FIP, of the FIPs for Chicago and the Metro East area, and as everyone is aware in Chicago there is also a FIP pending that will be removed when the FIP for the Chicago area is approved.

This docket is in response to USEPA's finding of certain deficiencies in the rules that were adopted.

During this time we were also in the process of developing the Title V Clean Air Act permit program. And in that program, the use of the terms source and emission unit were settled upon and we made a decision that they needed to be used consistently throughout our rules.

Since we were opening up a docket in response to USEPA, we determined that this

was also the opportunity to be sure that we use the term source and emission unit consistently in Parts 218 and 219. Therefore, we made those changes also.

The size of these rules is readily apparent. It is very difficult to have something that is absolutely perfect, and so as we were going through the rules, we found various typographical errors in the publication or in the proposal or, I mean, they could come from any number of places. We have also attempted to correct those.

Every time you read the rule you see some more. And so if anybody sees any more, we would appreciate you letting Diane know so that those can be incorporated and we will try to get a perfect rule. I think that might be sick, but, anyway, that is our goal.

Also at this time we were looking at the general organization of subtitle B. There are definitions scattered throughout subtitle B and we also decided that it would be

beneficial to try to get the definitions in one spot to the extent that that is possible and practical as far as the contents of the rules go.

Therefore, we also took the opportunity to move the definitions from Parts 218 and 219, Section 104 into Part 211, and at that time numbered all of the definitions in there. So that was another rather monumental project that we undertook.

I would note that the definitions in 218 and 219 are repetitious. So in the whole of subtitle B, we had the same definitions twice; now we will have them once. In the process of going through the rule and identifying where changes need to be made, it came to our attention that cooling towers should probably have been exempt in Section 980 (e), both 218 and 219.

However, they had been omitted from the FIP. And it seemed that the best way to deal with this problem was to develop a work

practice, which is also included in this proposal.

At the same time we also determined that non-SOCMI leaks had not been dealt with appropriately and we developed a work practice to address those as well, and that is also included in the proposal.

At the time this was going on, USEPA was negotiating with the printing FIP appellate and reached a solution with them. And so it seemed logical to include those negotiations or the result of those negotiations in this proposal as well.

I would note that 218 provides that when USEPA and a FIP appellate reach agreement or there is a court order or some final determination, we are supposed to reflect that in the rules anyway, and we are doing that at this time with them.

Also there was Ford Motor Company which had an adjusted standard that had been granted by the Board pending before USEPA.

There were some negotiations between Ford and USEPA regarding that adjusted standard and adjustments have been made to the language to reflect those agreements as well.

As I said, the size of the proposal invites errors.

On the table back there is an errata sheet that I have put together and I invite people to take a look at it. I have provided it to the Hearing Officer and ask that this be entered as an exhibit or a public comment, or however you want to deal with this.

This is a list of typographical types of errors that we have found so far, just in picking it up and reading it again we find things.

In addition, there are two things in here that are changed or that are additions. One of them is on page 4 of this sheet. And this is citations to the BIF and RCRA rule.

We have in one of the sections, it is Section 218, 219, 429 G, we refer to the

BIF and RCRA rules, but we had not provided a cit to them. We have added the citation.

The second thing that we added is on the last page, page 5 of this document, and that is the addition of the words federally enforceable permit in the alternative control plan sections of the non-CTG subpart.

Adding this federally enforceable permit language is consistent with the Clean Air Act permit program, which is legislation, and the recently approved state operating permit program, recently approved by USEPA.

This language clarifies what we believed the sections were saying all along.

So at this point Chris will summarize his filed testimony and then will be available for questions.

(Witness sworn.)

CHRISTOPHER ROMAINE,

having been first duly sworn,

was examined and testified in the narrative form as follows:

BY THE WITNESS:

A. Good morning.

My name is Christopher Romaine and I am testifying for the Illinois Environmental Protection Agency this morning.

As part of my duties at the Agency, I assist in certain aspects of program development for the Division of Air Pollution Control, including the development of regulations.

I actively participated in the development of this proposal. This is a logical consequence of my participation in a number of previous regulatory proceedings dealing with the definition of volatile organic material and control of volatile organic material emissions.

As stated in my prepared

testimony, in terms of numbers the majority of the proposed changes involve grammar, punctuation, choice of wording, proper regulatory format, similar types of routine clean up.

I think that most of those changes are self-explanatory.

The other changes are certainly more complex, but in general I believe that the statement of reasons, Ms. Bassi's explanation, and my prepared testimony, fully explain the various areas which we are trying to correct.

However, there are two areas of the proposal that I would like to explain in a little bit further detail. Also want to touch on two of the corrections as discussed in the errata sheet.

The first error, correction I want to explain a little bit more fully is the use of the term source and emission unit.

The terminology used in air pollution control programs varies from program

to program. In particular, the terminology used to describe a site or a complex, a source or a plant, and then the terminology used to describe the individual activity, the emission unit or operation that is in fact being regulated.

In terms of having understandable rules, it is important that those terms be used in a consistent fashion.

Because of this concern, the use of the terms facility, emission source and plant in Part 218 and 219 have been revised.

Under the proposed rules, an emission unit is used to refer to a piece of equipment or a specific activity like a coating line or degreaser, that is subject to an actual emission limit.

The term source is used to refer to the entire site or complex that is collectively comprised of all the emission units at the particular site.

So it is appropriate for the

particular context in Parts 218 and 219, the terms emission unit and source are substituted for the terms that are currently found.

For example, if you look at what is being done in subpart TT, the term emission unit was used wherever the term emission source was found.

Now, the intended meaning and effect of Parts 218 and 219 is not being changed as a result of this proposed change in terminology.

One of the key things that is being done to achieve this is that wherever possible a specific term is used rather than one of these general terms.

So if we are talk about a printing line or coating line or degreaser, then we talk about a printing line or coating line or degreaser. We don't refer to it as an emission unit.

In addition, one of the more difficult terms is the undefined and ambiguous

term facility. We have ceased using that term except where we believe that the intended meaning appears obvious from its context and past experience, and we couldn't come up with a suitable substitute.

So facility is really a term of last resort at this point.

Now, one of the concerns that we have had in talking to people, what this means is that overall the air pollution control rules are in a state of transition.

If you look at different parts of the rules, different terms are used. The Agency's long-term goal, of course, is to get to the point may we are using consistent terminology.

But, at the present time what this means is that if you look at the existing permit program in Part 201, that continues to use the terminology of emission source. If you look at the existing Board rules in Part 212, 214, 215, 216, 217, which deal with particulate

matter, SO2, the other contaminants and then control of volatile organic material in the attainment areas, they also continue to use the term plant and emission source.

However, if you look at Part 203, the New Source Review Rules, they are using the terminology that we are now proposing to use for Parts 218 or 219, and they have been used for the last five years or so. They use the term source to describe the overall plant or complex and the emission unit to describe the individual unit.

Of course, we are proposing to use that terminology for Parts 218 and 219.

And, finally, one of new developments is the Clean Air Act permit program purchase unit pursuant to Title V of the Clean Air Act.

The legislation that has been adopted also uses the term source and emission unit. That is sort of a guide book that when you are looking at the regulations, you have to

check which part you are at to see what terminology is being used, until we complete the overall correction.

I have indicated we are trying to use the federal terminology. We believe that the federal terminology will simplify Illinois' air pollution control rulemaking which will mainly be driven by the federal Clean Air Act requirements.

So when the Clean Air Act, which for most purposes we are dealing with in these regulations, uses source to describe a plant, it would be simpler if we use the term source to describe a plant.

That is one area.

The other area I would like want to run through again is dealing with what we are doing with definitions. Simply Kathleen has indicated we are proposing to move all definitions contained in Part 218 and Part 219 to Part 211.

Kathleen has indicated Part 211

contains general provisions and applies already to Parts 212, 214, 215, 216 and 217.

The proposed changes will mean that Part 211 will also cover Part 218 and 219. We believe that will result in more efficient rules.

The other thing that we are doing, however, is reorganizing Part 211, so that each definition has its own section number.

Again, this will make it simpler in the future, that we will be able to change individual sections and not have individual definitions and not have to open up the entire body of definitions.

But, what that mean is if you look at what is happening in the proposal, we have deleted the definitions in Section 218 and 219.

We have also deleted the current set of definitions in Section 211. And what you see in the definition, the proposal, is a

set of individual definitions in Sections 211.130 through 211.750.

So as you actually look at it, it appears that we are creating all new definitions. The important thing is that those definitions are being brought from Parts 218 and 219 and from the existing 211.122 and then being spread out section by section as new definitions.

We did not attempt to make any changes to terms not related to the volatile organic material and organic material control requirements of Parts 218 and 219.

So, for example, if you look at the definitions for grain handling, even though there might be some confusing terms in there, it was not part of our approach to clean up terms for grain handling related to particular rules.

We focused solely on the volatile organic material cleanup, consistent with getting USEPA approval of Part 218 and 219.

Then we have, of course, cleaned up the definitions that were previously contained in Parts 218, 219 as part of cleanup. And that has been necessary, first, to put them into the general provisions. It is also necessary to cleanup various areas that were unclear or inconsistent.

And as Kathleen has indicated, for a detailed explanation of what has been done to those definitions, look at Exhibit 5, which we have provided copies of.

So I think those are the sort of the two broad areas for everyone to understand the mechanics of what is being done in the proposal.

Once you understand the mechanics, then I think the substance is self-explanatory.

There are two points in the errata sheet I would like to touch on. The first deals with the citations for the boiler and Industrial Furnace Rules and the Resource

Recovery Conservation Recovery Act Rules.

These are related to changes being made for the leak provisions in Section 218.429 and 219.429.

Basically, we omitted to provide the proper regulatory citations for devises which burn hazardous waste, either regulated hazardous waste burners, or addressed as acceptable burning of wastes in boilers, industrial furnaces also. So we have added the regulatory citations.

And then the other one deals with the various provisions in subparts QQ, RR, TT and PP.

As we mentioned in the testimony, we recognize that the existence of federally enforceable state operating permits now provides another means to restrict a person's maximum theoretical omissions.

So instead of having to going through the FIP revision process to establish production of operating limitations, we can now

do that in the federally enforceable state operating permit.

After we submitted the proposal, we realized that federally enforceable state operating permits could also be a vehicle for establishing alternative control programs. That is also authorized by these sections.

So we are proposing to allow federally enforceable state operating permits to be used for this purpose as well.

Those cover the couple points I think may require a little bit of explanation. I am ready to answer any questions.

HEARING OFFICER O'NEILL: I am going to have the errata sheet entered as an exhibit. Make it Exhibit 1.

(The document above-referred to was marked Exhibit No. 1 for identification, and was received in evidence.)

HEARING OFFICER O'NEILL: I just want to clarify something.

On the page numbers on the errata sheet, those refer to which page numbers?

MS. BASSI: The page numbers on the errata sheet refers to the Board's first notice publication of the rule.

HEARING OFFICER O'NEILL: We will mark that as Exhibit 1.

We will go off the record for a minute.

(Discussion had off the record.)

HEARING OFFICER O'NEILL: We will go back on the record.

I want to note that there are six people from the public in attendance here, and I open it up for questions from any of them.

Does anybody have any questions for Mr. Romaine?

BY MS. VIDMAR:

Q. My name is Jacqueline Vidmar from Sonnenschein Nath & Rosenthal.

I am representing Riverside Laboratories, Minnesota Mining & Manufacturing

Company and Clearland Packaging.

I do have a couple of questions for Mr. Romaine.

The first is given that these rules will replace the rules in the federal implementation plan for RACT and also given that USEPA has extended the deadline for certain capture efficiency tests to be performed.

My question is why this compliance extension isn't reflected in these rules?

A. Look at the issue of capture efficiency. The substance of these rules has not been changed.

USEPA has indicated that the current capture efficiency method contained in this rule is adequate and it has not provided us with any new rules that could be substituted in their place.

What USEPA has indicated is that they will be further evaluating capture

methods, looking for alternative methods, alternative approaches to implementation of those methods that may be less expensive.

In the interim USEPA has stated that requirement for enforcement and implementation of those requirements.

As a practical matter, the Illinois EPA is taking the lead from USEPA and it is not enforcing those requirements either.

We will continue to follow the lead of USEPA. And if and when USEPA decides that there are better methods available, then we will proceed according to those better methods.

Q. As a follow up to that.

Given that the USEPA has extended the date of July 1, 1993 from July 1, 1992, is it IEPA's intention to follow the lead if USEPA extends that date beyond July 1, 1993?

A. Yes. That's correct.

If USEPA is unable to complete its evaluation by this July, we certainly would

not start acting until we have something definitive from them.

Q. I understand that part of revising these rules is also to make them more clear. I have another question relating to the capture and control efficiency protocols therein.

Does IEPA have a position with respect to performance of control device efficiency testing where multiple lines are vented to one control device, whether there are multiple tests that would need to be performed or whether or not it can be done at one time with all of the lines running with that one control device?

A. That's sort of a general implementation question.

In general we believe that testing should be conducted under conditions that are representative of the worst conditions of a device.

If in fact the worst-case

conditions would have only a few lines operating, that would be the appropriate scenario to be tested.

If, on the other hand, it is more representative to have a number of lines operating simultaneously because that's the most difficult scenario to show compliance, that's the scenario we would like testing to be performed.

So in the absence of capture efficiency testing associated with the destruction efficiency, I would say we would continue the Agency's historical practices, which in some cases allows there to be testing allowed while several units are operating, in other case we believe it is appropriate to test with a single unit operating, or only a couple of the units operating.

Q. Just so I understand your answer.

If a source wants to comply with these rules and has nine lines running to one control devise, and the worst-case scenario is

all eight lines could go down, you would expect there would be nine tests that would be run under these rules; or, is this done on a case-by-case basis?

I don't think I understand your answer.

A. It is done on a case-by-case basis, but I didn't follow your example.

Q. You said to me EPA would follow the worst-case scenario, which means with nine lines feeding to one control device, the worst case is eight lines go down and you do a line-by-line test, under the worst-case scenario.

A. I think that might be the case in a certain sense. It may be that the most difficult situation is only having one line operating.

We would not normally expect separate tests to be conducted for each of those eight lines by itself, but it might be appropriate to conduct a test to show with very

low loading to a control devise, maybe only one or two lines operating, to verify that in fact the control devise still controls compliance under that scenario.

But, we would not go through simply the exercise of saying what if each of those lines by itself was operating. We would again select a representative condition of very low loading and test for that circumstance.

Q. Okay.

I understand that these rules as written now have a compliance extension for those sources that have received a stay from the federal implementation plan by USEPA.

My question is one of my clients -- in fact, I think they are a few other parties who have FIP petitions, revision petitions, pending before US PA.

My question is was this. Has the Agency considered putting a stay from these rules for those sources in here; have they considered it; and, if so, why isn't it in

there?

A. I don't recall that we have considered that issue.

In particular, I am referring to an issue of a person like 3M, for example, who has submitted a petition for a FIP revision to USEPA, independent of a FIP appeal.

Q. Finally, has the Agency considered -- let me back up.

The way that I understand these rules are written, in order to get a variance from some of the protocols, et cetera, you need to file a FIP revision with the state.

And our experience has been that those have not proceeded expeditiously.

Has the Agency considered an alternative route, an alternative remedy for those sources who are seeking variances from the various protocols in these rules, that would be perhaps a quicker way of obtaining relief within these rules, rather than going before the Pollution Control Board, that is?

A. We have thought about it. It is actually a relatively recent thought on our part.

Again, once we realized that the operating permit could be used for putting limitations for maximum theoretical emissions, we did that. We have added an errata sheet. We can do it for alternative control plans.

We are also considering whether it would be possible to do it for other sorts of alternatives to the rules for federally enforceable state operating permits for that purpose.

However, it is not something we have discussed with USEPA and it is not something that has been opened in this proposal, either.

MS. VIDMAR: Thank you. I have no further questions.

MS. CIPRIANO: I just have one question.

Renee Cipriano on behalf of the American Automobile Manufacturers Association.

My question relates to compliance dates as well, as those dates apply to the requirements of 218, 211(f)(2) and in particular as those reporting and record keeping requirements relate to topcoating operations.

My question is if the information required under that section has not been maintained by the owner/operator for the three-year period, what will IEPA's approach be in terms of retroactive enforcement?

A. Well, looking at Ford, where we are revising the applicable record keeping requirements, we expect Ford to start complying with those new requirements when the revised rules are documented. It would be unreasonable to expect Ford to retroactively keep records.

We don't expect that there will have to be any changes to substantively meet the limit. We simply propose that when the rules take effect, that Ford will begin demonstrating compliance, using the appropriate

record keeping.

MS. CIPRIANO: That's all. Thank you.

HEARING OFFICER O'NEILL: Are there any other questions?

BY MR. FORCADE:

Q. I have a question relating to 218.986(c), which I believe is on about page 197, page 198 of the numbered version of the proposal. And is on page 5 of your errata sheet.

It provides essentially three control options. Option number 1 is to establish capture and control equipment meeting certain standards. Option number 2 is to employ coatings which have a particular content of VOM. Option number 3 is subcategory C, which says an alternative control plan which has been approved by the Agency and approved by USEPA as a FIP revision, or, in the case of your errata sheet you are adding in a federally enforceable permit.

My question is what standards

govern the development of an alternative control plan. How does this relate to capture and control equipment, or how does it relate VOM content?

Are there any standards that govern the development of an alternative control plan?

A. Going back to the purpose of these rules.

These rules are to establish reasonably available control technology. The particular subparts where this language included are the generic subparts. They establish crude control requirements.

They don't involve a very rigorous evaluation of all the possible people that may be subject to those requirements.

They accept 81 percent overall control as an acceptable level of control of the control devise being used, 3.5 pounds per gallon if coating operations are present.

So that the approach, if those

requirements could not be met, would be to determine whether the alternative control plan provided by a person demonstrates that reasonably available control technology is being achieved.

Q. So this is an unqualified RACT determination in (c), it is not something that would be equivalent to 81 percent capture?

A. Certainly the simplest approach to it, if a person has wants to demonstrate that is equivalent to 80 percent.

But, there also could be situations contemplated where, in fact, what is RACT is in no way equivalent to those requirements

MR. FORCADE: Thank you.

HEARING OFFICER O'NEILL: We will go off the record for a minute.

(Discussion had off the record.)

HEARING OFFICER O'NEILL: Back on the record.

That completes the questions and

testimony for this hearing today.

Are there any other matters that need to be address be handled on the record?

MS. CIPRIANO: Yes.

I would like to request a second hearing. Renee Cipriano on behalf of the American Automobile Manufacturers Association.

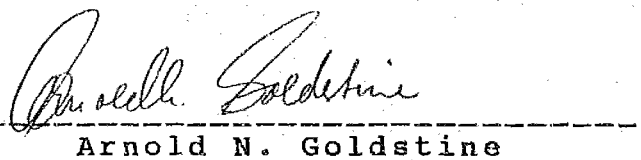
HEARING OFFICER O'NEILL: The second hearing is scheduled in this matter for June 4. It will start at 10:00 o'clock. It will be in the same room, room 940 in the State of Illinois building.

With that, we can conclude today's hearing.

(Whereupon, the hearing in the above-entitled matter was continued to June 4, 1993 at the hour of 10:00 o'clock a.m.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, Arnold N. Goldstine, a notary public and Certified Shorthand Reporter in and for the County of Cook and State of Illinois, do hereby certify that the foregoing is a true and complete stenographic record of the proceedings had in the above-entitled matter and, that the foregoing was reduced to printed transcript via computed-aided transcription, under my personal control and supervision.



Arnold N. Goldstine