

ILLINOIS POLLUTION CONTROL BOARD
April 15, 2004

IN THE MATTER OF:)
)
PETITION OF FORMEL INDUSTRIES, INC.) AS 00-13
FOR AN ADJUSTED STANDARD FROM 35) (Adjusted Standard - Air)
ILL. ADM. CODE 218.401(a), (b), (c))

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by J.P. Novak):

The Board today terminates, at the parties' request, an adjusted standard from the flexographic printing rule granted January 18, 2001. In re Petition of Formel Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code Section 218.401(a), (b) and (c), AS 00-13 (Jan. 18, 2001).

On April 2, 2004, the Illinois Environmental Protection Agency and petitioner, Formel Industries, Inc. (Formel) filed a "joint motion to withdraw adjusted standard." The parties report that the adjusted standard is no longer necessary since Formel has achieved compliance with the rule of general applicability at Formel's facility in Franklin Park, Cook County.

THE PRIOR ADJUSTED STANDARD OPINION

On March 14, 2000, petitioner Formel filed a petition for an adjusted standard, pursuant to Section 28.1 of the Environmental Protection Act (Act). 415 ILCS 5/28.1 (2002). Formel requested relief from the reasonably available control technology (RACT) requirements for volatile organic material (VOM) of 35 Ill. Adm. Code 218.401(a), (b),(c). Section 218.401 applies to sources with the potential to emit (PTE) 25 tons per year (TPY) or more of VOM. See Omnibus Cleanup of the Volatile Organic Material RACT Rules Applicable to Ozone Nonattainment Areas: Amendments to 35 Ill. Adm. Code 203, 211, 218 and 219, R93-9 (Sept. 9, 1993).

Section 218.401, also known as the flexographic printing rule, requires the flexographic printer to comply with its requirements by one of two alternative methods:

- 1) use water-based, compliant inks that contain no more than 40% VOM by volume, or no more than 25% VOM by volume of the volatile content of the ink; or
- 2) operate a capture system and control device which reduces the captured VOM emissions by 90% and equip the printing line with a capture and control device which provides an overall reduction in VOM emissions of at least 60%.

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At the time of its petition, Formel operated a small job-shop under a Clean Air Act Amendments Permit Program permit that allowed it to emit up to 80 TPY. Formel used three central-impression, flexographic printing presses, each 30-35 years old. The presses printed images using ink onto high-slip polypropylene, polyester, and cellophane film. After an image was printed onto the film, the film was then used as a flexible package or wrapping for food products for human consumption, such as pasta, candy, and snack food items. Formel utilized the high-slip material at the direction and specification of its customers. In re Petition of Formel Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code Section 218.401(a), (b) and (c) AS 00-13, slip op. at 2 (Jan. 18, 2001).

Formel presented information and evidence in its petition and at hearing in support of each of the factors found at Section 28.1(c) of the Act. The Agency concurred with Formel's information and supported granting the adjusted standard, subject to several conditions.

In its opinion granting the adjusted standard with conditions, the Board found that Formel had satisfied each of the factors of Section 28.1(c). Among other things, the Board found that:

the factors relating to Formel are substantially and significantly different than those considered by the Board when it adopted the flexographic rules. When those rules were adopted the Board was primarily presented evidence concerning methods that larger printing operations could use to achieve compliance with the rules adopted The facts . . . support Formel's contention and the Agency's agreement that compliant inks are not available for the products [Formel] prints, and the costs for add-on controls are economically unreasonable and in some cases also not technically feasible at Formel's Franklin Park facility. *Id.*; slip op at 7.

The Board finds persuasive the search that the Agency and Formel have diligently engaged in for the past six years to find compliance methods for Formel. That search demonstrates that in the case of Formel, "no control" represents RACT for Formel. The Agency informed the Board that this segment of the printing industry is going backwards in terms of using water-based inks, and that add-on technology is not technically or economically available to Formel. Based on this evidence and information, the Board finds that Formel has demonstrated that its facility has factors that distinguish it from other flexographic printers. *Id.*; slip op at 9-10.

The Conditions

The Board incorporated into its order, verbatim, conditions suggested by the Agency and agreed-to by Formel. The conditions fell into two basic categories: recordkeeping requirements and Emission Reduction Market Systems baseline calculation criteria. But, there were also other conditions specifying several circumstances under which the adjusted standard "must be revised or withdrawn." Condition 10 provided that:

This adjusted standard must be revised or withdrawn if Formel determines that any add-on control system is economically reasonable and technically feasible or if Formel uses any add-on control system that controls VOM emissions. *Id.*; slip op at 13-14.

THE JOINT MOTION

In their April 2, 2004 joint motion, the parties report that:

Formel has installed a catalytic oxidizer and so is capable of, and is in fact, complying with the flexographic printing rules at 35 Ill. Adm. Code 218.401 (a), (b), (c). The construction permit for the catalytic oxidizer was issued on October 31, 2001. Emissions Testing was successfully performed on May 31, 2002. A Title V [under the CAAA] operating permit initially issued on March 3, 2002, was modified on July 11, 2003 to include the catalytic oxidizer. Motion at 4.

Noting that there appear to be no applicable Board rules governing this matter of first impression, the parties suggest that withdrawal of this adjusted standard is the appropriate course of action. *Id.*

BOARD ANALYSIS AND CONCLUSION TO TERMINATE FORMEL'S ADJUSTED STANDARD

The Board appreciates the parties' difficulty in determining the precise nature of the appropriate action to request of the Board in this situation, based on the agreed language of the adjusted standard. After consideration, the Board finds that termination of the adjusted standard is the appropriate action, as Formel can no longer justify the need for the adjusted standard. As the parties have suggested no other more appropriate date, the Board terminates Formel's adjusted standard as of the date of this opinion and order. For any enforcement purposes, then, Formel's adjusted standard from 35 Ill. Adm. Code Section 218.401 (a), (b), and (c) was effective from January 18, 2001 through April 15, 2004.

Consistent with Section 28(d)(3) of the Act, the Board will publish notice of this determination in both the *Illinois Register* and the Board's newsletter the *Environmental Register* at the end of this fiscal year.

This supplemental opinion constitutes the Board's supplemental findings of fact and conclusions of law.

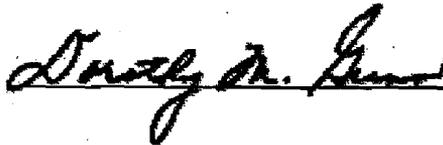
ORDER

Formel Industries Inc. was previously granted an adjusted standard from 35 Ill. Adm. Code Section 218.401 (a), (b), and (c) effective January 18, 2001 for three presses at its facility in Franklin Park, Cook County. Consistent with condition 10 of the Board's January 18, 2001 order granting the adjusted standard and at the parties' request, the Board terminates the adjusted standard as unnecessary effective April 15, 2004.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above supplemental opinion and order on April 15, 2004, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above the printed name and title.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board