UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	
INTERNATIONAL HARVESTER COMPANY	)	Docket No. CAA-120-V-84-1
	)	
	)	
	)	
Respondent	)	
	)	
	)	

Clean Air Act (Act), Section 120: Respondent held to be a major stationary source under Section 302 of Act, and as defined in 40 C.F.R. §66.3(g), and to be in violation of applicable emission limitations contained in Ohio State Implemation Plan, Ohio Administration Code (OAC), §3745-21-09(U), regarding coating (painting) operations at its Springfield, Ohio, facility; it being further held that service of Notice of Noncompliance not jurisdictionally defective; that respondent's coating lines are subject to regulation under OAC whether or not they contain ovens, and when coating nonmetal as well as metal parts; and that respondent not entitled to a refinishing exemption.

APPEARANCES:

For Complainant:

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INITIAL DECISION

Introduction

International Harvester's primary business activity consists of the manufacture and sale of medium size and heavy duty trucks. It engages in certain painting activities associated with its truck body and manufacturing facilities in Springfield, Ohio. (Ex. R-10 at 2) It is these painting or coating activities which are the subject of this litigation. The State of Ohio promulgated a rule or regulation dealing with the control of volatile organic compounds (sometimes VOC) which was formally submitted to the U. S. Environmental Protection Agency (sometimes U. S. EPA or complainant) as a revision to its State Implementation Plan (SIP). Upon approval by U. S. EPA it became a federally enforceable portion of the Ohio SIP. That portion of the SIP in issue, which will be addressed with particularity below, is found in the Ohio Administrative Code (OAC) 3745-21-09-(U). On September 28, 1984, U. S. EPA issued a Notice of Noncompliance (sometimes NON) to respondent* pursuant to Section 120 of the Clean Air Act, 42 U.S.C. 7420 (Act). The complaint charged that

*Shortly before the hearing, respondent changed its name to Navistar International Corporation. In the interest of consistency and clarity, either "respondent" or "International Harvester" will be used in this decision.

certain painting operations at respondent's Springfield, Ohio, plant were in violation of the Ohio SIP. The OAC 3745-2109-(U) provides, in short, that no owner or operator of a miscellaneous metal part coating (painting) line may permit the discharge into the ambient air of any VOC from such coating line unless the requirements of either subsections (U)(1)(a) or (b) are met. The former provides for VOC emission limitations for various types of coating operations. The latter provides for equipping the miscellaneous metal part or product coating line with a capture system and associated control efficiencies for VOCs. Subsection (U)(2) provides for certain exemptions. Specificaly at issue here is subsection (1)(a) (iii) which provides that the VOC content for each coating employed in the miscellaneous metal part or product coating line should not "3.5 pounds per gallon of coating, excluding water, for an extreme performance coating." Additionally, the "refinishing" exemption under subsection (U)(2) is in contention.

The parties entered into a stipulations of facts which, in pertinent part, established the following: Respondent operates 10 coating lines at its facility which are alleged to be in violation of the SIP. These are:

1. P001 (#57 Paint Spray Booth and Bake Oven)
2. P002 (#58 Medium Duty Body Spray Booth and Oven)
3. P003 (#59 Two-Tone and Repair Spray Booth and Oven)

4. P004 (#61 Two-Tone and Repair Spray Booth)
5. P007 (#64 Parts Spray Booth and Bake Oven)
6. P008 (#77 Paint Repair Booth and Oven)
7. P008 (#78 Paint Repair Booth and Oven)
8. P009 (#26 Wheel Paint System)
9. R004 (Line 1 Chassis Spray Booth)
10. R005 (Line 2 Chassis Spray Booth) (J. Ex. 1 at 11-12)

Each of the above coating lines paints metal parts and products. The metal parts and products do not include cans; coils; metal furniture; large appliances; aluminum or copper wire prior to its formation into an electromagnetic coil; or the frame, main body or other exterior sheet metal of an automobile or light duty truck while it is located at an automobile or light duty truck assembly plant. (J. Ex. 1 at 14) Respondent stipulated that neither the bake ovens nor water wash systems of any of the above mentioned coating lines constitute capture systems or associated control systems within the meaning of OAC §3745-21-09(U)(1)(b); and that there currently exists no equipment at respondent's facility that constitute such systems within the meaning of the provision. (J. Ex. 2 at 1-2) The coatings used on the above 10 lines are designed for exposure to year round, outdoor weather; detergents; scouring; solvents; corrisive materials; corrosive atmospheres; and similar harsh conditions, which coating may be

described as extreme performance coatings. From January 14, 1983, to the date of the stipulation, respondent has used coatings on the coating lines listed below, which coatings have VOC emissions as follows:

Line	VOC Content, Excluding Water (lbs/gal.)
P001 (#57)	4.44
P002 (#58)	4.86 3.92
P003 (#59)	4.86 3.92
P004 (#61)	4.44
P007 (#64)	4.86 3.92
P008 (#77)	3.92 4.44 5.32
P008 (#78)	3.92 4.44 5.31
P009 (#26)	4.86 3.92
R004 (Chassis #1)	3.92 5.31
R005 (Chassis #2)	3.92 5.31

Each of these lines emits, and since September 28, 1984, the date of the NON, continues to emit VOCs into the ambient air. (J. Ex. 2 at 14-16)* In 1985, respondent emitted approximately 650 tons of VOCs into the ambient air. (Ex. R-6 at Ex. A)

ANALYSIS AND FURTHER FINDINGS OF FACT

1. Notice of Noncompliance

Brent Marable (Marable) is an environmental engineer with complainant. He examined the NON (and other related documents) prior to its issuance by the Regional Administrator. At that time, it contained the "entire package." It included the Technical Support Document, and the Instruction Manual for Section 120 noncompliance penalties. There was an unspecified time lapse between Marable's review and mailing of the envelope. He did not put the package together and mail it to respondent; nor did he know who mailed the envelope and it probably was not his secretary. (Ex. C-1 at 2; Tr. 101, 114) Steven Covey (Covey) is a senior

*In the stipulation line R001 (#92) with a VOC content of 3.92, 4.44 and 5.31 was included. In a pretrial submittal of March 4, 1986 (J. Ex. 2), complainant dismissed with prejudice its claim that line R001 at any time since commencement of this action was in violation of OAC §3745-21-09(U).

attorney at the respondent's headquarters since 1981, working in its law department. He is the attorney having primary responsibility concerning the receipt of documents. Incoming mail to respondent is first sorted in the main mailroom, then sent to the appropriate departmental mailroom where it is placed in the addressee's mailbox. After that, the U. S. EPA envelope in question was handled by at least two, but no more than three, people before it was delivered to Covey. In late September or early October 1984, Covey received a letter, and certain documents from complainant, addressed to Jack Rutherford (Rutherford), the then President of respondent. When Covey received the envelope it had been opened by Rutherford's secretary. The documents were paper clipped to the outside of the original envelope. The letter referred to various items that were enclosed. The materials received by Covey contained the NON and certain sections of the Code of Federal Regulations and the Rules of Practice, 40 C.F.R. Part 22. The documents received by Covey did not include copies of the noncompliance penalty regulations, Technical Support Document and Instruction Manual that were mentioned in the covering letter. Covey reopened the envelope, and tore it apart before discarding it to make certain it contained no other materials. He got in touch with each person who handled the materials to determine whether or not they removed anything from the envelope.

These included secretaries who handled the opened envelope and Covey was told that they neither discarded or retained any of the envelope's enclosures. In Covey's five year tenure at respondent's headquarters he is not aware of any occasion where an item addressed or directed to him in the respondent's intra-office mail was lost. It is found that the Technical Support Document and the Instruction Manual were not enclosed with the NON sent to respondent. Covey had the telephone number of complainant's counsel, but he did not call him concerning the missing documents. The missing material related to penalty calculations. The pleadings show that the missing documents had been published officially. (45 Fed. Reg. 50122-50240, July 20, 1980) This citation and its reference to penalty were cited in both the NON and the transmittal covering letter. Covey acknowledged that he read the documents sometime after receiving the NON. Additionally, the pleadings show that counsel for respondent had dealings with complainant following receipt of NON, moving for extensions of time on three occasions. Further, discovery between the parties was undertaken following the NON and notwithstanding the absence of the documents. The pleadings also addressed the penalty calculations. The missing documents were subsequently sent to respondent's counsel. Counsel for respondent admitted that he was subsequently provided with missing material by complainant's counsel. Covey stated that he did not know of any harm that came to respondent as a re-

spondent as a result of the omission of the documents. (Ex. R-1; Tr. at 101, 114, 122-127, 131-133, 138, 139)

2. Coating Line:

Lines R004 and R005 do not have ovens. William Juris (Juris) an official in the Ohio Environmental Protection Agency (OEPA) drafted Section 38745-21-09(U) and the definition of "coating line" in the OAC. For the year 1985, R004 and R005 emitted 236 tons and 79 tons of VOC, respectively, for a total of 315 tons. This accounts for about 50 percent of the total VOC emissions of all respondent's lines. (Ex. R-6, Ex. A).

James Nooks (Nooks) is employed by respondent as a supervisor, Plant Equipment and Layout, and the employee chiefly responsible for environmental matters. (Ex. R-6; Tr. 219-220). In 1985, respondent, in the person of Nooks, applied to the OEPA for a variance for lines R004, R005 and other lines, from the requirements of Section 3745-21-09(U), stating that higher emission limits were needed than that prescribed. A variance was granted until December 31, 1987. With reference to R004 and R005, the "Equipment Description" in the variance states "Miscellaneous Metal parts coating line" (emphasis supplied), and the Special Terms and Condition of the variance state that it is in lieu of the requirements of 3745-2109(U)(1)(a)(iii). (Ex. C-1, attachments G, H, I) The resolution of the "coating line" question, however, is essentially

one of legal interpretation and will be treated more fully below under Discussion and Conclusions of Law.

3. Coating Operations

The second and third issues in this proceeding concern the painting of non-metallic parts and the question of respondent's refinishing operations. Respondent's operations concerning these questions will be addressed below.

Respondent's facility consists of one building being approximately 2,000,000 square feet in area, of which about 60,000 square feet are used for to offices. The remainder is devoted to manufacturing activity, of which the painting department is one of the discrete units. The coating or painting operations are conducted in different areas of the plant. The painting booths in issue vary in size from approximately 1000 to 9000 square feet. The coating booths or lines perform the following operations with reference to the parts that are painted.

Line No.	Parts Coated
P001	Cabs, hoods, etc., 5 percent non-metallic parts
P002	Cabs, hoods, etc., 31 percent non-metallic parts
P003	Cabs, hoods, etc., 50 percent refinishing, 31 percent non-metallic parts
P004	Heavy duty cabs; multi-tone systems; 50 percent refinishing
P007	Miscellaneous small metal parts; 31 percent non-metallic parts

Line No.	Parts Coated
P008	100 percent refinishing of all parts
P009	Wheels
R004	Medium duty chassis
R005	Heavy duty chassis

Parts to be coated in the coating lines are conveyed into the respective booths on overhead conveyor lines. In the case of lines R004 and R005 the conveyor is installed in the floor. Once the parts are in the painting booth an operator paints them with a paint applicator or spray gun. Except for the parts painted on lines R004 and R005, the parts are then conveyed into ovens for drying and baking. Lines R004 and R005 do not have ovens.

Some of the lines or booths are used to paint non-metallic parts. Non-metallic parts are made only from non-metallic materials and have no metal formed on them. The table above sets forth the percent of non-metallic parts painted in the respective lines. The percentage was determined by respondent on the basis of the surface area of non-metallic parts painted to the total surface area of all parts painted in the designated booth.

Some of respondent's painting booths also serve the function of "refininshing." The refinishing operations in terms of the amount of paint used on the respective lines is also set out on the table above.

The total amount of paint used by respondent for 1985, its total VOC emissions, and other pertinent data is reflected in Exhibit A attached to respondent's Exhibit 6. With reference to this, respondent represents that the amount of VOC accounted for in painting non-metallic materials, and in the refinishing process, was 104.1 tons in 1985, as reflected in the following table:

Line No.	Percent Non-Metallic	Percent Refinishing	Total VOC (Tons)	VOC Attributed to Non-Metal and Refinishing
P001	5	0	83.8	4.2
P002	31	0	125.1	38.8
P003	31	50	18	14.6
P004	0	50	19.7	9.6
P007	31	0	52	16.1
P008	0	100	20.8	20.8
				104.1

(Ex. R-6 at 2-6, 11; Tr. 186)

The percentages of non-metallic parts painted and that used for refinishing varies. Respondent was unable to provide these percentages for on or about September 28, 1984. It would have been basically the same as 1985, however, as the same types of products went through the system. The same paint is sprayed on metallic parts as on non-metallic parts. Respondent's lines P001, P002, P003 and P007 coat or paint both metallic and non-metallic parts. When the hanger is traveling through the spray booths on these lines, there are times when both metal and non-metal parts are attached to it. This would also have been the case on or about September 29, 1984. (Tr. 187-209, 258-259)

Concerning "refinishing," respondent's lines P003 and P004 are used 50 percent of the time for this process, and it is 100 percent in the case of line P008. (Ex. R-6 at 5). Respondent's "refinishing" process is the touching-up of missed areas and scratches that occur on its newly painted trucks. It also embraces quality problems in the paint such as, it being too thin or dirt on the finish. Until these problems are corrected the trucks are not completed, finished or ready for delivery. (Tr. 221-226)

DISCUSSION AND CONCLUSIONS OF LAW

1. Notice of Noncompliance

The pertinent regulation, 40 C.F.R. §66.12, addresses the content of the NON. In significant part it provides as follows:

> (a) Each notice of noncompliance shall be in writing and shall include:
>
> * * *
>
> (3) Instructions on calculating the amount of penalty owed and the schedule for payments. Such instructions shall include (i) a statement of the date from which penalties should be calculated and (ii) a copy of the Technical Support Document and the Manual.

The latter documents were not included with the NON. For the reasons stated in its brief respondent's position is that complainant did not follow its own regulations to include the documents; that because an incomplete NON was sent to respondent it was a fatal omission, jurisdictional in nature; and U.S. EPA lost jurisdiction to proceed to have the matter adjudicated. (R. Op. Br. at 13-16) Respondent draws a parallel between a civil complaint and the NON, stating ". . . just as a civil complaint is invalid where service of process is not proper, the incomplete NON sent to [respondent] was not sufficient to confer jurisdiction on [U. S. EPA]." (R. Op. Br. at 13) Respondent's comparision to a civil complaint is not persuasive. Fed. R. Civ. P. 4 provides

for the service of process in the federal courts and it may be used as an analogy. Rule 4 should be liberally construed in the interest of doing substantial justice and the propriety of service in each case should turn on its own facts. This is consistent with the modern concept that service of process is primarily a notice giving device. United Food and Commercial Workers Union v Alpha Beta Company, 736 F.2d 1371, 1382 (9th Cir. 1984); FTC v. Compagnie de Saint - Gobain Point-A-Mousson, 636 F.2d 1300, 1312, n. 61 (D. C. Cir. 1980); 4 Wright and Miller, Federal Practice and Procedure, Civil §1083. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Conley v. Gibson, 355 U. S. 41, 48 (1957); Hildebrand v. Honeywell, Inc., 622 F.2d 179, 181 (5th Cir. 1980). The transmittal letter with the NON provided adequate notice to respondent referring to the official citation where the penalty calculations were cited. Respondent's counsel was subsequently provided with the missing documents and Covey admitted that no harm befell respondent from the omission of the documents. Absent a showing of prejudice resulting from such a procedural defect a dismissal is not warranted. United Food & Commercial Workers Union v. Alpha Beta Company, supra. Additionally, respondent had dealings with complainant following the defective service, applying for and re-

ceiving three extensions. In a similar situation, when the summons served on defendant did not bear a facsimile of the clerk's signature, the seal of the court, or defendant's name, was undated, and required a response to the complaint service was void. However, discovery was going forward and defendant obtained three stipulations extending the time to answer. It was held that defendant would be estopped to deny service of process. Maricopa County v. American Petrofina, Inc., 322 F. Supp. 467 (D. C. Cal. 1971). The service of the NON was sufficient, on the facts of this case, to confer jurisdication on U. S. EPA to proceed with adjudication.

2. Coating Line

The pertinent language of OAC §3745-21-09(U) is as follows:

(U) Surface coating of miscellaneous metal parts and products.

(1) Except where exempted under paragraph (U)(2) of this rule, no owner or operator of a miscellaneous metal parts or product coating line may cause allow or permit the discharge into the ambient air of any volatile organic compounds from such coating line, after the date specified in paragraph (c)(28) of Rule 3745-21-04 of the Administrative Code unless the requirements of either paragraph (U)(1)(a) or (U) (1)(b) of this rule are satisfied. (Emphasis supplied)

(a) The volatile organic compound content of each coating employed . . . does not exceed the least stringent of any of the following limitations which are applicable:

* * *

> (iii) 3.5 pounds per gallon of coating, excluding water, for an extreme performance coating;

To come within the purview of OAC §3745-21-09(U), sometimes hereinafter Section, there most exist a "coating line." The definition of "coating line" is found in Section 3745-21-01-(D)(8) of the OAC and reads:

> "Coating line" means a series of one or more coating applicators, flash-off areas and ovens wherein a surface coating is applied, dried, and/or cured.

Section 3715-21-01-(D)(32) defines "oven" to mean "a chamber within which heat is used for one or more of the following purposes: dry, bake, cure or polymerize a surface coating." Respondent argues that a plain reading of the definition of "coating line" requires that it contain three separate components, a coating application, a flashoff area and an oven; that in any event it must contain an oven. In that lines R004 and R005 do not have ovens respondent's view is that they do not come within the scope of the Section. Complainant urges that the definition is ambiguous;

that the definition can be read to include or not include coating lines that lack ovens; and that the evidence shows that an oven is not required to bring the coating activity within the definition.

A quick, surface reading of the definition of "coating line" would seem to indicate that its meaning is plain and clear and that an oven is required. A closer examination shows, however, that there is some confusion and conflict within the definition. For example, while the definition appears to demand a "series" of components it also requires "one or more" of the three components, applicators, flash-off areas and ovens. The definition can result in "a series of one." Ambiguity did and does exist concerning the definition of "coating line." Juris is the person who drafted the definition of "coating line." He provided evidence that OEPA field offices had received inquiries from sources who believed the definition to be unclear concerning whether or not ovens were required in order to come within the definition. (Ex. C-2, at 3) Where such ambiguity exists it is incumbent to make a search for legisative intent. The purpose of the Act and the apparent goal of the OAC is to provide, among others, for the enhancement of the quality of the Nation's air resources so as to promote the public health and welfare. Section 1 of Act, 42 U.S.C. §7401.

Where the language of a statute, as in the case of "coating line," may be susceptible of two interpretations, it should

be interpreted in a manner which effectuates rather than frustrates the purpose of the legislative draftsman. Shapiro v. United States, 335 U.S. 1, 31 (1948). This is particularly true where, as here, remedial legislation is involved. Construction should be broad in order to effectuate its purposes. Tcherepnin v. Knight, 389 U. S. 332, 336 (1967). Even assuming, without concluding, that the definition were clear, respondent's argument is unconvincing. Where to follow the plain meaning of words in a statute will lead, though not to absurdities, to an unreasonable result, plainly at variance with the policy of the legislation as a whole, the purpose of the statute, rather than the literal words, is followed. United States v. American Trucking Association 310 U.S. 534, 543 (1940). When aid to construction of the meaning of words, as used in a statute is available, there can be no rule of law which forbids its use, however clear words may appear on superficial examination. Train v. Colorado Public Interest Group, 426 U.S. 1, 10 (1976).

The intent of the Ohio legislative is found in part from the evidence provided by Juris that the definition was not intended to exclude coating lines which lacked ovens. To eliminate any ambiquity and concerning the definition, in 1985 Juris revised the definition to clarify OEPA's intent that a "coating line" need not have an oven. In further support of its intent and interpretion of the definition in issue, in a communication dated March 3,

1986, OEPA advised the U. S. Department of Justice that it interpreted "coating line" to apply to coating activities which do not make use of either flash-off areas or ovens. (Ex. C-5) An administrative agency's interpretation is entitled to great deference. Chevron U.S.A. Inc. v. National Resources Defense Council Inc., _____ U. S. _____, 81 L. Ed.2d 694, (1984). The Agency's interpretation is controlling unless plainly enroneous. United States v. City of Painesville, 644 F. 2d 1186, 1190 (6th Cir. 1981), cert. denied, 454 U.S. 894 (1981).

Respondent's argument contains an additional frailty. To illustrate, Section 3745-21-09(U)(1)(a)(ii) concerns miscellaneous metal part or product coating lines that apply "zinc rich primer coating." This term is defined to mean "any coating which contains primarily zinc pigment . . . and which is dried at ambient or inplant temperature." Section 3745-21-01-(D)(51). Such drying occurs without an oven. It, therefore, follows by definition that Section 3745-21-09(U) applies to coating lines that do not have ovens.

Respondent's coating lines without ovens, more particularly lines R004 and R005, come with the scope of the definition of "coating line" and are subject to the requirements of OAC §3745-21-09(U).

3. Coating Operations

OAC §3745-21-09(u)(2) provides that the requirements of the Section shall not apply to certain operations. Among such operations is "the application of a refinishing coating to motor vehicles." Section 3745-21-09(U)(2)(c). "Refinishing" and "motor vehicles" are not defined. Coating lines P003, P004 and P008 are involved in respondent's refinishing operations.

In seeking exemption to the Section respondent relies principally upon the dictionary definition of "refinish" to support its position, which definition means "to give a new surface." It is argued that the common meaning of "refinishing" encompasses the application of paint to give a new surface to a previously painted surface; that trucks that have been "finished" are inspected before they are marked for delivery; that trucks with scratches or other problems in the paint finish are then refinished to correct these defects; and that respondent's operations come within the common meaning of "refinishing." (Resp. Op. Br. at 25-27) However, the black and white of the refinishing exemption lends credence to complainant's interpretation that respondent is not engaged in "refinishing." In short, respondent's additional operations are necessary to complete or finish the product, not to refinish it.

The position taken by the respondent is somewhat surprising in that it had been advised previously of the interpretation of

OEPA concerning "refinishing coating." In 1981, the Regional Air Pollution Control Agency wrote to Nooks responding to his question concerning "refinishing." The respondent, through Nooks, was advised that the intent and interpretation of OEPA concerning the refinishing exemption were that "refinishing coating" refers to work done by body shops during the repair of damaged vehicles and it did not apply to work done by a vehicle manufacturer who performed top coat repair, and that the refinishing exemption did not apply to these operations of respondent. (Ex. C-3; Tr. 271) This position is reinforced by Juris, who drafted the refinishing exemption. His testimony showed that the intent of the "refinishing" exemption was that it apply to body shops in the motor vehicle after market, and OEPA did not mean that the exemption apply to paint repair by assembly plants prior to delivery and sale of the motor vehicle. (Ex. C-2 at 5) Assuming, without concluding, that there exist some question concerning the meaning of "refinishing" as used in the exemption, such doubt must be resolved in favor of complainant because of the evidence offered by Juris and that expressed in Exhibit C-3. For the reasons mentioned above concerning coating lines, great weight and deference must be accorded to the intent and interpretation of OEPA, the drafters of the refinishing exemption. Lines P003, P004, and P008 do not come within the "refinishing" exemption of OAC §3745-09-(U)(2)(c) and such lines are subject to OAC §3745-21-09-(U)(1).

The Section and its subsections (1) and (a) apply to "miscellaneous metal part or product" coating lines. The testimony of Juris showed OEPA intent and interpretation to be: (1) That the Section does not regulate coating of pure non-metallic parts; (2) This is so even if the non-metallic part is attached to the same hanger as the metal part during the coating or painting process; and (3) The Section does not regulate coating of non-metallic parts where these parts are not physically attached to the metallic parts. (Ex. R-13 at 2; Tr. 291-296) It does not necessarily follow, however, that because non-metallic parts within a coating line are not regulated that the entire coating line does not come within the purview of the Section. OEPA interpretation of the Section is that coating lines which coat both metallic and non-metallic parts are subject to regulation under the Section. (Exs. C-1, attachment J; C-6 at 7) This is the case even though the coating line coats 90 percent non-metallic parts and 10 percent metal parts; - it remains a "miscellaneous metal part or product coating line." (Tr. 339) Also to be considered on this issue is the opinion of Nooks. Though a non-lawyer, he was perforce well acquainted with, and had a working knowledge of, the Section as it applied to his employer's facility. He had

informed his superiors that in his opinion all the lines* listed on page five of his verified affidavit were in violation of the Section. (Tr. 219-220) OAC §3445-21-09(U) applies to respondent's coating lines P001, P002, P003 and P007.

ULTIMATE CONCLUSIONS

1. Respondent's coating lines 57 (P001), 58 (P002), 59 (P003), 61 (P004), 64 (P007), 77 (P008), 78 (P008), 26 (P009), chassis line 1 (R004) and chassis line 2 (R005) at its Springfield, Ohio, Assembly Plant are subject to the Ohio Administrative Code §3745-21-09(U)(1).

2. Respondent caused, allowed and permitted the discharge of volatile organic compounds into the ambient air from the aforementioned coating lines which exceed the emission limitation of 3.5 pounds per gallon of coating for extreme performance coatings.

3. Respondent's coating lines do not meet the requirements of Ohio Administrative Code §§3745-21-09(U)(1)(a) or (b); nor are any of the respondent's coating lines exempt under §3745-21-09(U)(2) of the aforementioned Code.

*This is respondent's Exhibit 6. Among the lines listed on page five are P001, P002, P003 and P007, which lines are used in part to paint non-metal parts.

4. Respondent is a major stationary source under section 302 of the Act, 42 U.S.C. § 7602, and as defined in 40 C.F.R. §66.3(g) because it directly emits on has the potential to emit, over 100 tons of volatile organic compounds into the ambient air.

5. The failure of complainant to enclose a copy of the penalty calculation Technical Support Document and Instruction Manual with the Notice of Noncompliance at the time of its service upon respondent had no effect on the validity of the Notice of Noncompliance, and did not impair the jurisdiction of U.S EPA to proceed with adjudication of the proceeding.

6. Respondent's coating lines R004 and R005 are subject to the Ohio Administrative Code §3745-21-09(U)(1) in that coating lines are subject to regulation whether or not they have ovens.

7. The exemption in the Ohio Administrative Code §3745-21-09(U)(2)(c) for "the application of a refinishing coating to motor vehicles" does not apply to any coating line involved in this proceeding.

8. Coating lines which coat both metal and non-metal parts or products are "miscellaneous metal part or product coating line[s]" subject to Ohio Administrative Code §3745-21-09(U).

Respondent has violated the Ohio Administrative Code §3745-21-09(U)(1)(a)(iii) concerning each of the coating lines mentioned above in paragraph "1" since the issuance of the Notice of Non-compliance on September 24, 1984, and is subject to a penalty under Section 120 of the Clean Air Act.

Frank W. Vanderheyden
Administrative Law Judge

Dated: December 19, 1986