

ILLINOIS POLLUTION CONTROL BOARD

May 7, 1998

IN THE MATTER OF:)
)
 PETITION OF THE LOUIS BERKMAN) AS 97-5
 COMPANY, d/b/a THE SWENSON) (Adjusted Standard - Air)
 SPREADER COMPANY, FOR AN)
 ADJUSTED STANDARD FROM 35 ILL.)
 ADMIN. CODE PART 215 SUBPART F)

JAMES E. MEASON, ATTORNEY AT LAW, APPEARED ON BEHALF OF PETITIONER; and

BONNIE R. SAWYER, ASSISTANT COUNSEL TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

In an interim opinion and order dated December 4, 1997, the Board considered petitioner Louis Berkman d/b/a Swenson Spreader Company's (Swenson) request for an adjusted standard from certain air regulations. The Board determined that Swenson was entitled to an adjusted standard and directed Swenson to file a compliance plan for that adjusted standard.

Swenson has filed a compliance plan, which the Illinois Environmental Protection Agency (Agency) opposes and portions of which it has moved to strike. The parties have filed several other pleadings regarding the compliance plan that are addressed below. In this final opinion and order, the Board grants Swenson an adjusted standard from 35 Ill. Adm. Code 215.204(j)(2) for its current operations beginning on May 7, 1998. The adjusted standard will terminate on May 7, 2008. The adjusted standard is subject to the conditions set forth in the order that follows this opinion.

PROCEDURAL HISTORY

Swenson manufactures snow and ice control equipment at a plant in Lindenwood, Ogle County, Illinois. Swenson applies coatings to its products. In this proceeding, Swenson seeks an adjusted standard from a regulation that limits the amount of volatile organic material (VOM) that may be contained in its coatings.

Specifically, Section 215.204(j)(2) requires that Swenson use coatings that contain no more than 3.5 pounds of VOM per gallon (VOM lb./gal.). Swenson claims that not all of the coatings that it must use can meet this limit. Petition Narrative (Nar.) at 2. Although Part 215 provides several alternatives to complying with this limit, Swenson believes that the cost

of these alternatives is unreasonable. Nar. at 10; see 35 Ill. Adm. Code 215.205(b), 215.206(a)(1).

For the first year after the grant of the adjusted standard, Swenson requests an adjusted standard that would allow it to use coatings that contain, on a monthly average, 5.0 VOM lb./gal. Thereafter, Swenson requests an adjusted standard that would allow it to use coatings that contain, on a monthly average, 4.75 VOM lb./gal. Nar. at 49. The Agency opposes Swenson's request.¹

Board Hearing Officer Deborah Frank Feinen held hearings in this case on April 25, 1997, and June 3, 1997.² No members of the public attended either hearing. In accordance with a Hearing Officer order, both parties filed post-hearing briefs.

In its order of December 4, 1997, the Board made various findings of fact and conclusions of law that are incorporated herein by reference. In summary, the Board found that coatings that comply with Section 215.204(j)(2) are not available for some of Swenson's customer orders. The Board also found that the cost that Swenson would incur to comply with the regulatory alternatives to Section 215.204(j)(2) are unreasonable. The Board concluded that these factors are substantially and significantly different from those that the Board considered when adopting Section 215.204(j)(2). The Board also concluded that an adjusted standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting Section 215.204(j)(2), and that an adjusted standard is consistent with applicable federal law. The Board therefore found that it would grant Swenson an adjusted standard, with certain modifications further discussed below (see pp. 4-10).

Swenson filed a proposed compliance plan (Comp. Plan) on February 3, 1998. The Agency responded to that plan on February 26, 1998 (Agency Resp.). Pursuant to a hearing officer order, Swenson filed a response to the Agency's response on March 16, 1998 (Swenson Reply). The Agency filed a motion for leave to file a reply to Swenson's response, along with the reply, on March 18, 1998 (Agency Surreply). In the interest of having a complete record, the Board grants the Agency's motion for leave to file the Agency Surreply.

On March 30, 1998, Swenson filed two additional pleadings: a motion for leave to file a response to the Agency's Surreply (Swenson Response to Agency Surreply), and a motion for leave to file an amendment to the Swenson Reply (Swenson Amended Reply). The Agency did not file a response to either motion. The Board grants both motions.

¹ The Agency's original response, filed on February 26, 1997, is cited as "Resp. at ___."

² The transcript of the April 25, 1997 hearing is cited as "Tr.1 at ___;" the transcript of the June 3, 1997 hearing is cited as "Tr.2 at ___." Swenson's exhibits at the hearings are cited as "Pet. Exh. ___"; the Agency's exhibits at the hearings are cited as "Resp. Exh. ___."

The Agency also moved to strike portions of the compliance plan by motion dated February 18, 1998 (Mot. to Strike), to which Swenson replied on February 26, 1998 (Reply to Mot. to Strike). The Board addresses these pleadings below.

MOTION TO STRIKE

The Agency moves to strike portions of Swenson's proposed plan on several grounds. First, the Agency argues that in its proposed plan, Swenson has attempted to introduce new evidence. Mot. to Strike at 1. Specifically, the Agency argues that much of the information on page 2 of the compliance plan regarding powder coatings was previously stricken from its post-hearing reply brief. Mot. to Strike at 2. The Agency also argues that Swenson has introduced new information about limitations on the use of powder coatings on page 2 of the compliance plan. Mot. to Strike at 2. The Agency argues that Swenson's compliance plan was to be based on the record of the adjusted standard proceeding, and that this new information is in effect an amended adjusted standard petition to which the Agency may file a response. Mot. to Strike at 2.

Swenson objects to the motion, arguing that there are no statutory or regulatory provisions limiting the information included in a company's compliance plan, and that the Board's order of December 4, 1997, imposed no limitations on the content of the compliance plan. Swenson also argues that its compliance plan should not be deemed an amended adjusted standard petition, because the Board has already determined that Swenson should be granted an adjusted standard. Reply to Mot. to Strike at 2. Swenson argues that it has provided complete information to allow the Board and the Agency to conduct a full and informed review of the plan. Reply to Mot. to Strike at 3.

The Board denies the Agency's motion to strike. The Board's order of December 4, 1997, did not limit the content of the proposed compliance plan. Furthermore, given that Swenson does not currently use a powder coating system, the information that Swenson provided on powder coatings is not relevant.

Even if Swenson is allowed to present new information regarding powder coatings in its compliance plan, the Agency argues that the compliance plan should be stricken because it is in effect an amended petition that is not verified in accordance with 35 Ill. Adm. Code 106.706. Mot. to Strike at 2. The Board does not agree, however, that the compliance plan is an amended adjusted standard petition. Therefore, the Board will not order Swenson to verify the compliance plan.

PROPOSED COMPLIANCE PLAN

Swenson's proposed compliance plan describes its current coating line and the procedures and methods it will use to determine VOM emissions.

Coating Line Description

Swenson states that it currently operates one 320 sq. ft. (20' x 16') Binks downdraft wet spray booth, with a 32,000 cu. ft./minute fan capacity. Comp. Plan at 3. Swenson states that the fan provides 100 ft./minute air velocity to meet Occupational Safety and Health Administration regulations. Comp. Plan at 3. Swenson uses GRACO PRO AA 4500 high pressure, low volume electrostatic spray guns for high solids finishing. Comp. Plan at 3.

Procedures and Methods to Determine VOM Emissions

Swenson proposes to calculate the average VOM emitted on a monthly basis by determining the total VOM in pounds delivered to the coating applicator and dividing that amount by the number of coating gallons used in that calendar month. Comp. Plan at 3. In making these calculations, Swenson will use the VOM content provided in the material safety data sheets that it receives from its paint suppliers. Comp. Plan at 3. Swenson will keep its VOM tracking records on site, and will provide those records along with its annual emissions report. Comp. Plan at 3.

Swenson states that its paint personnel and paint supervisor daily track paint usage by the number, color, type, and size of units sprayed. Comp. Plan at 3. Paint personnel and supervisors provide this information to Swenson's environmental compliance officer. Comp. Plan at 3. The environmental compliance officer computes the VOM emissions for each month, and compares these calculations with purchase records and standing inventory to ensure accuracy. Comp. Plan at 3.

Swenson states that it will continue to work with wet coatings suppliers to develop low VOM content coatings of acceptable adherence and durability. Comp. Plan at 3-4. Swenson also will continue to investigate using powder coatings. Comp. Plan at 4. Swenson is willing to amend its proposed compliance plan by December 4, 2002, the mid-point of its ten-year adjusted standard. Comp. Plan at 4.

DISCUSSION

The Agency objects to Swenson's proposed compliance plan on several grounds. First, the Agency notes that Swenson has indicated that it may use powder coatings to comply with the adjusted standard. Agency Resp. at 2-3. The Agency believes that the compliance plan must confirm, one way or the other, whether Swenson will use powder coatings. Agency Response at 2-3, 4. If Swenson will use powder coatings, the Agency argues that the adjusted standard should be revisited when Swenson begins to use powder coatings. Agency Response at 3. The Agency reiterates these arguments in its Surreply, and further argues that Swenson has engaged in a "pattern of attempts to withhold and mischaracterize information about its offer to use powder coating in this proceeding." Surreply at 2. Swenson disputes this charge. Swenson Response to Agency Surreply at 1-2.

The Board does not agree that Swenson's compliance plan must commit to using powder coatings (or to commit that it will not). While the compliance plan should address the possibility that Swenson may use powder coatings, no purpose would be served by requiring Swenson to pledge to use, or not to use, powder coatings. Swenson has consistently stated that it may use powder coatings, but that it will need some time to implement and test a powder coating system.

Second, the Agency argues that if Swenson intends to include powder coating in its monthly average VOM to comply with the 4.75 VOM lb./gal. limitation, the plan does not propose a method to perform this calculation. Agency Resp. at 3. The Agency notes that one gallon of liquid coating will cover a lesser area than a gallon of powder coating. This is so, the Agency states, because powder coating is virtually all solids, while liquid coating is a combination of solids and VOM, and the VOM evaporates after it is applied. Agency Resp. at 3. In addition, less powder coating will be used if the powder coating system recycles overspray. Agency Resp. at 3-4.

In reply, Swenson argues that given that it does not have a powder coating system, and does not know what coatings it would use if it did, it is not possible to state how it would factor in powder coatings when computing its monthly average. Swenson Reply at 2. Swenson proposes that it amend its compliance plan to address this issue if and when it begins to use a powder coating system that uses a powder coating with VOM. Swenson Reply at 2.

The Board finds Swenson's approach generally reasonable, but finds that Swenson should amend its compliance plan if it begins to use a powder coating system, whether or not that system uses a powder coating that contains VOM. The Board believes that it is important for the Board and the Agency to know how powder coatings would affect Swenson's average VOM emissions.

Third, the Agency raises a number of concerns about the methods that Swenson proposes to use to track VOM emissions, as well as certain omissions from Swenson's proposed compliance plan. The Board addresses those concerns below.

Other Compliance Plan Issues

Swenson's Proposal to Track Paint Usage

The Agency notes that Swenson proposes to use "theoretical" usage rather than "actual" usage in calculating its monthly average, and to check the results against purchase and inventory records. Agency Resp. at 5. The Agency argues that Swenson should track actual coating usage. Agency Resp. at 5.

Swenson disagrees with the Agency's claim that Swenson plans to track "theoretical" rather than "actual" usage. Swenson Reply at 2. Swenson claims that its method will be more accurate than the method the Agency has proposed because Swenson will cross-check its usage records against its inventory records. Swenson Reply at 2.

The Board finds Swenson's proposal unclear. From Swenson's description of its operations, it should be able to track, on a daily basis, the total VOM in pounds delivered to the coating applicator and the amount of coating, in gallons, used each day. The Board's order will include a requirement that Swenson do so. The order also will require Swenson to maintain these records on site for three years and to make them available for Agency inspection during regular business hours. In addition, Swenson must provide the Agency with a summary report on its average monthly VOM emissions on an annual basis beginning on May 7, 1999.

The Agency noted that the Board's order did not make it clear whether the monthly average that Swenson calculates should be a cross-line average. The Board notes that Swenson has only one coating booth now, so cross-line averaging is not currently an issue. It was the Board's intent that Swenson calculate its monthly VOM average for all of its coating operations, and the order will so provide. As later explained, if Swenson changes its processes in a way that affects its VOM emissions, Swenson must apply for a modified adjusted standard.

Swenson's Use of Thinners

In addition, the Agency notes that Swenson's plan does not indicate if Swenson adds thinners to coatings before applying the coatings, and if so, how it will account for such thinners in calculating the total pounds of VOM delivered to the coating applicator. Agency Response at 5.

Swenson replies that its calculations will include any solvents (*i.e.*, thinners) added to coatings. Swenson Reply at 2. The compliance plan that the Board orders requires Swenson to include any solvents or thinners added to coatings when it calculates its VOM emissions.

Exclusion of Water from Swenson's VOM Calculation

The Agency notes that Swenson has not clarified whether it will exclude water and other exempt compounds in calculating VOM lb./gal., as 35 Ill. Adm. Code 215.204 requires. In the Swenson Reply, Swenson states that it will exclude water and any other compounds exempted from the regulation's definition of VOM. Swenson Reply at 3. The compliance plan that the Board orders requires Swenson to exclude water and other compounds exempted from the definition of VOM when it calculates its VOM emissions.

Swenson's Reliance on Material Safety Data Sheets for VOM Content

The Agency objects to Swenson's plan to obtain data on the VOM content of its coatings from the material safety data sheets (MSDS) provided by each coating supplier. The Agency argues that this data is acceptable only if the coating supplier determined VOM content in accordance with Method 24, 40 CFR Part 60. Agency Resp. at 5-6. The Agency notes that Method 24 is a United States Environmental Protection Agency (USEPA) standard

and that the USEPA may require it as a prerequisite to approving this adjusted standard as a state implementation plan revision. Agency Resp. at 5-6.

Swenson argues that it is not its burden to demonstrate compliance with 35 Ill. Adm. Code 215.208. Swenson Reply at 3. While the regulation provides that “[t]he VOM content of coatings shall be determined by Method 24,” it does not specify who must determine that content. Swenson Reply at 3. Swenson argues that it is not in a position to dictate to coating suppliers how to test their products, although Swenson is willing to encourage its suppliers to use Method 24, if they do not do so already. Swenson Reply at 3. Swenson further argues that industries across the United States rely on MSDSs, and that it should be allowed to do so barring information impeaching the integrity of a particular MSDS. Swenson Reply at 3.

In the Swenson Amended Reply, Swenson argues that it has learned that the Agency is interpreting Section 215.208 differently than it has previously interpreted 35 Ill. Adm. Code 218.105(a)(2), a regulation which also requires the use of Method 24. Swenson Amended Reply at 2. Swenson argues that in a stipulation and settlement entered in People v. Dynaweld (March 7, 1996), PCB 96-127, the Agency stipulated that “Dynaweld was informed, by a representative of the Agency, that MSDS[s] submitted by Dynaweld with its application to renew its operating permit . . . were sufficient to demonstrate compliance with 35 Ill. Adm. Code 218.105(a).” People v. Dynaweld, PCB 96-127, Stipulation and Settlement at 13. The Agency went on to maintain, however, that a condition in Dynaweld’s operating permit required it to test each coating as applied under Method 24, in accordance with 35 Ill. Adm. Code 218.105(a). Dynaweld, PCB 96-127, Stipulation and Settlement at 13.

From this, Swenson draws the inference that Dynaweld was required to use Method 24 only because of the condition in its operating permit, not because it is required in Section 218.105(a)(2). Swenson Amended Reply at 2. Swenson then argues that because Section 215.208 is “substantively the same” as Section 218.105(a)(2), Section 215.208 must be interpreted similarly. Swenson Amended Reply at 2. Finally, Swenson cites various federal and state cases for the proposition that an agency may not change a practice or custom with respect to its interpretation of an ambiguous rule. Swenson Amended Reply at 2.

* The Board finds Swenson’s arguments unpersuasive. The Board is reluctant to draw a conclusion about the Agency’s “custom and practice” on the basis of a few statements in a single stipulation and settlement that addresses a different regulation. Furthermore, it is far from clear that the inferences that Swenson draws from the Dynaweld stipulation are correct; other interpretations certainly are possible. In any event, it is important to remember that this is an adjusted standard proceeding, in which the Agency is free to propose that Swenson use Method 24 as a condition of this adjusted standard whether or not Illinois’ regulations require that method.

The Board finds that Swenson should use Method 24 to determine the VOM content of its coatings. The Board found that method appropriate when it adopted Section 215.208, and similarly finds it an appropriate condition on Swenson’s adjusted standard. See 415 ILCS 5/28.1 (1996) (in granting an adjusted standard, the Board may “impose such conditions as

may be necessary to accomplish the purposes of this Act.”). If its coating suppliers can provide records to Swenson that demonstrate that the coating supplier determined VOM content under Method 24, Swenson need not re-test the coatings, although it must maintain a copy of the records that the coating supplier has provided on site for three years. If Swenson tests the coatings itself, it must maintain those records on site for three years. In either case, Swenson must make these records available for Agency inspection during regular business hours.

Swenson’s Records

The Agency notes that Swenson appears to propose that it will maintain records of coating usage on an aggregate basis. The Agency argues that unless Swenson maintains records of usage on a coating-by-coating basis, it will be difficult for the Agency to verify compliance. Agency Response at 6.

Swenson did not address this concern in the Swenson Reply. While it is not clear that Swenson did propose to maintain records on an aggregate basis, the Board agrees that it would be difficult for the Agency to verify compliance if Swenson did so. Accordingly, the compliance plan that the Board orders requires Swenson to maintain records on a coating-by-coating basis.

Swenson’s Dip Tank

The Agency notes that Swenson’s compliance plan fails to mention the dip tank that it uses at its facility. Tr.1 at 181. The Agency argues that the compliance plan must account for any coatings and thinners used in Swenson’s dip tank. Tr.1 at 6. In the Swenson Reply, Swenson states that it no longer operates or maintains a dip tank. Swenson Reply at 3. The Board finds that given that the compliance plan will require Swenson to calculate its average monthly VOM emissions on for all coating operations, the compliance plan need not address whether Swenson uses a dip tank.

Requiring Swenson to Continue to Make Efforts to Comply with Section 215.204(j)(2)

Finally, the Agency argues that the compliance plan should require Swenson to: maintain contact with coating vendors regarding the availability of coatings that comply with Section 215.204(j)(2) (compliant coatings); submit annual reports to the Agency detailing Swenson’s efforts to find compliant coatings; re-evaluate the adjusted standard if Swenson is able to meet a limit lower than the adjusted standard by 15% or more; report to the Agency on Swenson’s research into and use of powder coatings; withdraw its adjusted standard if Swenson’s emissions are and will continue to be 80% or less of 25 tons per year based on current production and orders. Agency Resp. at 7-8.

In the Swenson Reply, Swenson argues that these requirements are overly burdensome and serve no legitimate purpose. Swenson Reply at 4. Swenson argues that even with a powder coating system, its emissions will be near the upper limit of the adjusted standard.

Swenson Reply at 4. Swenson states that it will keep abreast of developments in the coatings industry out of necessity. Swenson Reply at 4.

The Board finds that the compliance plan should require Swenson to undertake, with some modifications, the efforts that the Agency suggests. These measures are similar to those that the Board has imposed upon others who have received adjusted standards or site-specific standards. For example, the Board required Roadmaster Corporation and DMI, Inc. to contact at least three coating vendors per year to determine if compliant coatings were available. See Petition of DMI, Inc. for Site-Specific Air Regulations, 35 Ill. Adm. Code 215.215 (February 6, 1992), R91-9 (DMI), slip op. at 5-6; Site-Specific Petition of Roadmaster Corporation (April 26, 1990), R88-19 (Roadmaster), slip op. at 2-3. Similarly, the Board required Solar to “continue its research and development efforts regarding solvents-based adhesives” See Joint Petition of Solar Corporation and the Illinois Environmental Protection Agency for Adjusted Standards from 35 Ill. Adm. Code 218, Subpart PP (July 20, 1995), AS 94-2, slip op. at 11. The Board also required DMI and Roadmaster to report to the Agency on their efforts on an annual basis. DMI, R91-9, slip op. at 5, Roadmaster, R88-19, slip op. at 4. Accordingly, the Board finds it reasonable to require Swenson to maintain contact with at least three coating vendors each year regarding the availability of compliant coatings, and to report these contacts to the Agency on an annual basis. Swenson also must test any compliant coatings that these vendors provide, as well as any compliant coatings that the Agency identifies to Swenson in writing, and must include the results of these tests in its annual report to the Agency. In a similar vein, the Board believes it reasonable for Swenson to include in an annual report the status of its research on powder coatings.

In addition, the Agency requests that Swenson re-evaluate the adjusted standard if Swenson is able to meet a limit lower than the adjusted standard by 15% or more, and withdraw the adjusted standard if Swenson’s emissions are and will continue to be 80% or less of 25 tons per year based on current production and orders. Agency Response at 7-8. The Board finds these requirements are somewhat duplicative and potentially unworkable. Instead of imposing these requirements, the Board will follow the same approach it did regarding DMI and Roadmaster: if Swenson’s research shows that it can technically and economically use compliant coatings, or a powder coating system, Swenson must propose a plan to switch to such coatings or to a powder coating system. Furthermore, Swenson must move for a modification of its adjusted standard if it modifies its processes in a way that affect its VOM emissions, including if Swenson begins to use a powder coating system.

The Board emphasizes that Swenson has several options if it objects to the conditions that the Board has placed on this adjusted standard. First, under the Board’s procedural rules, Swenson may move the Board to reconsider the conditions that the Board has placed on this adjusted standard. Second, Swenson may appeal the Board’s adjusted standard to the Illinois Appellate Court. (Of course, the Agency also may move that the Board reconsider this order or may appeal this order.) Third, Swenson may choose to comply with the rule of general applicability -- *i.e.*, 35 Ill. Adm. Code 215.204(j)(2) -- in lieu of the adjusted standard. In Citizens Utilities v. Pollution Control Board, 9 Ill. App. 3d 158, 164, 289 N.E.2d 642, 647 (2nd

Dist. 1972), the Illinois Appellate Court held that a petitioner who is granted a variance upon conditions retains the option of complying with the rule of general applicability in lieu of the variance. The same logic applies in an adjusted standard proceeding and therefore Swenson has the same option.

CONCLUSION

The Board grants Swenson an adjusted standard from 35 Ill. Adm. Code 215.204(j)(2) for its current operations beginning on May 7, 1998. The adjusted standard will terminate on May 7, 2008. The adjusted standard is subject to the conditions set forth in the following order.

ORDER

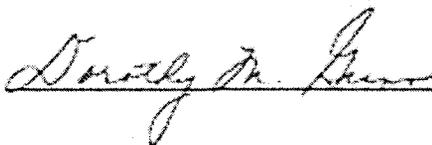
1. The Board grants Swenson a ten-year adjusted standard from 35 Ill. Adm. Code 215.204(j)(2) beginning on May 7, 1998 and ending on May 7, 2008. Under this adjusted standard, Swenson must not cause or allow the emission of volatile organic material (VOM) from its coating operations at its facility in Lindenwood, Ogle County, Illinois, to exceed a monthly average of 4.75 pounds of VOM per gallon of coating (VOM lb./gal.).
2. The adjusted standard is subject to the following conditions:
 - a. Swenson must maintain records, on a daily basis, of the amount of VOM, in pounds, that it delivers to each coating applicator each day and the amount of coatings, in gallons, it uses each day. Swenson must maintain these records on site, on a coating-by-coating basis, for three years. Swenson must make these records available for Agency inspection during regular business hours.
 - b. Swenson must calculate the monthly average VOM emissions on the basis of the total amount of VOM (including VOM in solvents, thinners, or other materials added to coatings) delivered to its coating applicators each calendar month and the total amount of coatings used in that calendar month. In calculating this average, Swenson must exclude water and any compounds that are specifically exempted from the definition of VOM, as specified in 35 Ill. Adm. Code 215.204. Swenson must provide the Agency with a summary report on its average monthly VOM emissions, in lb./gal., on an annual basis beginning on May 7, 1999.
 - c. In determining its VOM emissions, Swenson must use the VOM content of coatings as determined in accordance with Method 24, 40 CFR Part 60. Swenson must maintain records demonstrating the VOM content of its coatings, as determined by Swenson or its coating suppliers in accordance with Method 24, 40 CFR Part 60, on site at its facility for three years. Swenson must make these records available for Agency inspection during regular business hours.

- d. Swenson must maintain contact with at least three paint vendors a year regarding the availability of coatings that comply with 35 Ill. Adm. Code 215.204(j)(2), and must provide a written report to the Agency of these contacts annually beginning on May 7, 1999. Swenson must test any compliant coatings that these vendors provide, as well as any compliant coatings that the Agency identifies in writing to Swenson, and must include the results of these tests in an annual written report to the Agency. Swenson also must discuss in this report the status of its research into the use of powder coatings.
2. Swenson must apply to the Board to withdraw this adjusted standard if its research shows that Swenson can technically and economically use coatings that comply with 35 Ill. Adm. Code 215.204(j)(2) or a powder coating system.
3. Swenson must apply to the Board to modify this adjusted standard if Swenson modifies its production processes in a manner than affects its VOM emissions (including, but not limited to, the use of a powder coating system).

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of May 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

