ILLINOIS POLLUTION CONTROL BOARD
September 1, 2005

IN THE MATTER OF:	)	
	)	
PETITION OF FORD MOTOR COMPANY	)	AS 05-5
FOR AN ADJUSTED STANDARD FROM	)	Adjusted Standard - Air
35 ILL. ADM. CODE 218.586	)	

KATHLEEN C. BASSI, JANE E. MONTGOMERY, and KAVITA M. PATEL of SCHIFF, HARDIN & WAITE APPEARED ON BEHALF OF PETITIONER; and CHARLES E. MATOESIAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

Ford Motor Company (Ford) filed a petition seeking an adjusted standard from the Board's air regulations. Ford owns a motor vehicle assembly plant in Chicago at which it initially fuels newly assembled vehicles. Ford controls the emission of vapor from its gasoline fueling operations through a Stage II vapor recovery system operating with at least 95% removal efficiency, as required by Section 218.586 of the Board's air regulations. At its Chicago plant, Ford now manufactures and fuels only motor vehicles equipped with onboard refueling vapor recovery (ORVR) systems. The ORVR systems meet new federal requirements to recover at least 95% of gasoline fueling vapors. Since the new ORVR systems alone meet the recovery levels of Section 218.586, Ford seeks an adjusted standard from the Stage II recovery rules and to require instead that Ford comply only with federal ORVR regulations. The Illinois Environmental Protection Agency (Agency) recommends that the Board grant the request.

In today's order, the Board finds on the basis of the record before it that Ford has provided sufficient justification for an adjusted standard for its Chicago Assembly Plant under Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2004)).

This order will first describe the procedure through which petitioners may seek adjusted standards before providing the procedural background of this case and taking up a preliminary matter. The Board then summarizes the factual background of this petition and the standard of review applicable to it under the Act. In subsequent sections, the order contains both the current generally applicable standard and the adjusted standard proposed by Ford for this plant. Finally, the Board evaluates the statutory factors it must address in reviewing this petition before reaching its conclusion and order.

ADJUSTED STANDARD PROCEDURE

The Act and Board rules provide that a petitioner may request, and the Board may grant, an environmental standard that is different from the generally applicable standard that would otherwise apply to the petitioner. The general procedures governing an adjusted standard proceeding are found at Section 28.1 of the Act and Part 104, Subpart D of the Board's

procedural rules. 415 ILCS 5/28.1 (2004); 35 Ill. Adm. Code 104.400 *et seq.* Specifically, the Board's rules for the contents of the petition for an adjusted standard and the Agency recommendation are found at Sections 104.406 and 104.416, respectively. 35 Ill. Adm. Code 104.406, 104.416.

PROCEDURAL BACKGROUND

On February 25, 2005, Ford petitioned the Board (Pet.) for an adjusted standard from 35 Ill. Adm. Code 218.586, the Board's organic material emission standards and limitations for the Chicago area with regard to gasoline dispensing and motor vehicle fueling operations. Ford requested that the Board hold a hearing on this petition in order to satisfy the public participation requirements of the State Implementation Plan (SIP) required by the federal Clean Air Act. Pet. at 10; Rec. at 8, citing 42 U.S.C. § 7410; *see* 35 Ill. Adm. Code 104.406(j), 218.108.

The Act and the Board's regulations require publication of notice of a petition for an adjusted standard in a newspaper of general circulation in the area likely to be affected by the petitioner's activity. 415 ILCS 5/28.1(d)(1) (2004); 35 Ill. Adm. Code 104.408(a). Notice must be published within 14 days of filing a petition for an adjusted standard with the Board. *Id.* As required, Ford on March 9, 2005 timely filed with the Board proof of publication indicating that the *Daily Southtown* published notice of the petition on March 4, 2005. *See* 35 Ill. Adm. Code 104.410. No party other than Ford requested that the Board hold a hearing in this matter.

In a March 17, 2005 order, the Board found that Ford's petition did not fully satisfy the informational requirements contained in Section 28.1(c) of the Act. Petition of Ford Motor Company for an Adjusted Standard From 35 Ill. Adm. Code 218.586, AS 05-5, slip op. at 2-3 (Mar. 17, 2005); *see* 415 ILCS 4/28.1(c) (2004). Accordingly, the Board directed Ford to provide three items of information, without which it would not be able to grant the petition for an adjusted standard. Petition of Ford Motor Company for an Adjusted Standard From 35 Ill. Adm. Code 218.586, AS 05-5, slip op. at 3 (Mar. 17, 2005).

On April 12, 2005, the Agency filed its recommendation (Rec.). The Agency recommended granting Ford's petition and requested that the Board adopt specific language as part of an adjusted standard for Ford's initial fueling operation. Rec. at 5 (suggesting six conditions).

The Board held a hearing in matter before Hearing Officer Bradley Halloran on June 28, 2005 (Tr.). One witness, John C. Baguzis, appeared for Ford, and two witnesses, Jerry Clark and Darwin Burkhart, were present from the Agency. On July 22 2005, Ford filed its post-hearing brief (Ford Brief). On the same date, Ford filed a motion to correct transcript. On August 9, 2005, the Agency filed both its post-hearing brief (Agency Brief) and a motion to correct the transcript of the hearing. On August 15, 2005, Ford filed a reply brief (Reply Brief). Although the hearing officer set a deadline of July 25, 2005 for public comment, the Board did not receive any public comment with regard to this matter.

PRELIMINARY MATTER

On July 22, 2005, Ford filed a motion to correct transcript. In that motion, Ford requests that the Board order 27 specific corrections to the transcript of the hearing held June 28, 2005 in this matter. To date, the People have not filed a response to the motion to correct. If a party files no response to a motion within 14 days, the party will be deemed to have waived objection to granting the motion. 35 Ill. Adm. Code 101.500(d). The Board hereby grants Ford's motion to correct the transcript as set forth in the motion.

On August 9, 2005, the Agency filed its own motion to correct the transcript of the hearing. In that motion, the Agency requests that the Board order seven specific corrections to the transcript of the hearing held June 28, 2005 in this matter. To date, Ford has not filed a response to the motion to correct. If a party files no response to a motion within 14 days, the party will be deemed to have waived objection to granting the motion. *See* 35 Ill. Adm. Code 101.500(d). The Board hereby grants the Agency's motion to correct the transcript as set forth in the motion.

FACTUAL BACKGROUND

Ford owns a motor vehicle assembly plant, the Chicago Assembly Plant (Plant), located at 12600 South Torrence Avenue within the Chicago ozone nonattainment area. Pet. at 3. The Plant, constructed in 1924, occupies 2.7 million square feet and employs approximately 2,700 persons. *Id.* Although the Plant is located in an industrial area, its vicinity includes a residential area. *Id.*

At the Plant, Ford assembles vehicles from parts manufactured at other locations. Pet. at 3. Final assembly includes providing the vehicle with enough fuel to move it from the assembly area to a holding area before it is transported to the customer. *Id.* Pursuant to the Clean Air Act Permit Program (CAAPP), the Agency issued Ford a permit for the Plant, and the permit remains in effect. *Id.*; *see* 415 ILCS 5/39.5 (2004). Ford's permit allows it annually to dispense as much as 3.93 millions of gasoline at the Plant. Pet. at 3. Without any control, initial fueling would emit approximately 21.62 tons of volatile organic material (VOM). *Id.*; Pet., Exh. 4, Attachment 1 (attributing 11 pounds of VOM per 1000 gallons of gasoline).

Ford uses a Stage II vapor recovery system to capture and control gasoline vapors displaced during fueling at the plant. Pet. at 3, *see* 35 Ill. Adm. Code 218.586 (implementing Section 182(b)(3)(A) of the Clean Air Act). The system uses a specialized gasoline-dispensing nozzle to capture vapors, which are then piped to an afterburner on the roof of the plant. The afterburner ignites and combusts the vapors using a natural gas-fired pilot. Pet. at 4; *see* Pet., Exh. 5 (diagram of Stage II system); *but see* Rec. at 3 (describing typical system capturing vapors into storage tank).

Ford now manufactures at the Plant only vehicles equipped with ORVR systems. Pet. at 4; Pet., Exh. 4. ORVR systems retain displaced gasoline vapors in a carbon canister located in the vehicle. Pet. at 4. "Over time, as the engine runs, the vapors are desorbed by engine heat and used as fuel for the engine." Pet. at 7. Ford designs and certifies its ORVR systems to provide 98% capture efficiency. Pet. at 3-4. The ORVR systems annually capture 21.19 tons of VOM from the Plant. Pet., Exh. 4. The remaining annual emissions of 0.43 tons of VOM are

routed to the Stage II system. At 95% removal efficiency, the Stage II system destroys approximately 0.408 tons of VOM per year. Pet., Exh. 4.

STANDARD OF REVIEW

Section 218.586 does not specify a level of justification or other requirements that Ford must satisfy in order to obtain an adjusted standard. *See* 35 Ill. Adm. Code 218.586; Pet. at 2; Rec. at 7. Therefore, under Section 28.1 of the Act (415 ILCS 5/28.1 (2004)), the burden of proof is on Ford to demonstrate that:

1. Factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

2. The existence of those factors justifies an adjusted standard;

3. The requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4. The adjusted standard is consistent with any applicable federal law. 415 ILCS 5/28.1(c) (2004); 35 Ill. Adm. Code 104.426(a).

CURRENT APPLICABLE STANDARD

The regulations applicable to Ford's vehicle fueling operations are set forth at 35 Ill. Adm. Code 218.586, which provides in pertinent part:

a) For the purposes of this Section, the following definitions apply.

1) Average monthly volume means the amount of motor vehicle fuel dispensed per month from a gasoline dispensing operation based upon a monthly average for the 2-year period of November, 1990 through October 1992 or, if not available, the monthly average for the most recent twelve calendar months. Monthly averages are to include only those months when the operation was operating.

2) Certified means any vapor collection and control system which has been tested and approved by CARB [California Air Resources Board] as having a vapor recovery and removal efficiency of at least 95% (by weight) shall constitute a certified vapor collection and control system. CARB testing and approval is pursuant to the CARB manual, incorporated by reference at 218.112 of this Part.

* * *

8) Gasoline dispensing operation means any operation where motor vehicle fuel is dispensed into motor vehicle fuel tanks or portable

containers from a storage tank with a capacity of 2176 liters (575 gallons) or more.

* * *

11) Motor vehicle fuel means any petroleum distillate having a Reid vapor pressure of more than 27.6 kilopascals (kPa) (four pounds per square inch) and which is used to power motor vehicles.

12) Owner or operator means any person who owns, leases, operates, manages, supervises or controls (directly or indirectly) a gasoline dispensing operation.

* * *

14) Vapor collection and control system means any system certified by CARB which limits the discharge to the atmosphere of motor vehicle fuel vapors displaced during the dispensing of motor vehicle fuel into motor vehicle fuel tanks.

b) The provisions of subsection (c) below shall apply to any gasoline dispensing operation which dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. * * *

c) No owner or operator of a gasoline dispensing operation subject to the requirements of subsection (b) above shall cause or allow the dispensing of motor vehicle fuel at any time from a motor fuel dispenser unless the dispenser is equipped with and utilizes a vapor collection and control system which is properly installed and operated as provided below:

1) Any vapor collection and control system installed, used or maintained has been CARB certified.

2) Any vapor collection and control system utilized is maintained in accordance with the manufacturer's specifications and the certification.

3) No elements or components of a vapor collection and control system are modified, removed, replaced or otherwise rendered inoperative in a manner which prevents the system from performing in accordance with its certification and design specifications.

4) A vapor collection and control system has no defective, malfunctioning or missing components.

5) Operators and employees of the gasoline dispensing operation are trained and instructed in the proper operation and maintenance of a vapor collection and control system.

6) Instructions are posted in a conspicuous and visible place within the motor fuel dispensing area and describe the proper method of dispensing motor vehicle fuel with the use of the vapor collection and control system.

* * *

35 Ill. Adm. Code 218.586.

FORD'S PROPOSED ADJUSTED STANDARD

In its petition, Ford proposed an adjusted standard providing:

> The Ford Motor Company Chicago Assembly Plant is not subject to the requirements of Section 218.586, effective immediately, so long as the vehicles fueled at the Chicago Assembly Plant are equipped with onboard vapor recovery systems certified by the U.S. Environmental Protection Agency to capture a minimum of 95% of the gasoline vapors displaced during fueling. Pet. at 5.

In its recommendation, the Agency requested that "the Board adopt the following language as part of an adjusted standard for Ford's initial fuel fill operations at the Plant:"

1. The Ford Motor Company Chicago Assembly Plant shall not be subject to the requirements of 35 Ill. Adm. Code § 218.586, so long as the vehicles fueled at the Chicago Assembly Plant are equipped with onboard vapor recovery systems certified by the USEPA to capture a minimum of 95% of the gasoline vapor displaced during fueling.

2. Ford shall file an application to revise its CAAPP permit to reflect the presence of ORVR in all assembled vehicles in lieu of the existing Stage II vapor recovery system.

3. Ford shall operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code Part 218, including but not limited to, Subpart Y.

4. The relief granted in this proceeding shall be limited to the Stage II recovery system at the Plant as of April 8, 2004.

5. Ford shall operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act and other applicable regulations not otherwise discussed herein.

6. Ford shall continue to report all annual emissions to the Illinois EPA commensurate with the requirements of 35 Ill. Adm. Code Part 254.

Rec. at 5. At the hearing, Ford's counsel stated that "those conditions are acceptable." Tr. at 33.

Ford addressed these conditions in its reply to the Agency's post-hearing brief. In response to the first condition, Ford agreed that only vehicles equipped with ORVR systems certified with a minimum capture efficiency of 95% would be fueled at the Plant. Reply Brief at 1. In response to the second, Ford states that it "will file an application to revise its CAAPP permit upon issuance of the Board's order granting the Adjusted Standard." Reply Brief at 2. Ford also agreed to the third condition, stating that all provisions of Part 218, including Subpart Y, would remain applicable to it and that it would continue to comply with them. *Id.* Ford also agreed to the fourth, applying this adjusted standard to the Stage II system only at the Chicago Assembly Plant as of April 8, 2004. *Id.* With regard to the fifth condition, "Ford agrees that it will continue to comply with the Clean Air Act, Illinois Environmental Protection Act and all other applicable regulations." *Id.* Finally, with regard to the sixth, Ford "agrees that it will continue to follow the requirements of 35 Ill. Adm. Code Part 254 and report all annual emissions to the Illinois EPA." *Id.*

SUBSTANTIALLY DIFFERENT FACTORS

Ford states that Section 218.586 of the Board's air regulations provides for Stage II control of vapors from gasoline fueling operations. Pet. at 1. Specifically, "[t]he regulations require that affected dispensers of gasoline install, use, and maintain a vapor collection and control system certified by the California Air Resources Board. . . ." *Id.* Certification requires vapor recovery and removal efficiency of at least 95%. 35 Ill. Adm. Code 218.586(a)(2). Ford further states that the Board in 1992 adopted Stage II regulations in Stage II Gasoline Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 215, 218, and 219, R91-30 (Aug. 13, 1992). Pet. at 2. The United States Environmental Protection Agency (USEPA) approved the Board's Stage II regulations as part of Illinois' SIP for ozone. Pet. at 2; Pet., Exh. 1 (approving revisions in R91-30 on Jan. 12, 1993, at 58 FR 3841). In his testimony at hearing, John Baguzis of Ford stated his understanding that, at the time these rules were contemplated and enacted, ORVR systems did not exist. Tr. at 27; *see* 57 FR 13220 (Apr. 15, 1992) (announcing USEPA decision not to promulgate ORVR requirements).

Ford states that Section 202(a)(6) of the Clean Air Act requires automobile manufacturers to incorporate ORVR system in new passenger vehicles. Pet. at 2; Pet., Exh. 2 (providing text of 42 U.S.C. § 7521(a)(6)). USEPA adopted the final rule implementing the ORVR requirement on April 6, 1994. Pet., Exh. 3 (providing text of 59 FR 16262). All of the vehicles manufactured at the Plant are equipped with ORVR systems designed and certified with 98% capture and control efficiency. Pet. at 4; Tr. at 27; Pet., Exh. 4 (affidavit of John Baguzis).

Ford argues that the U.S. Congress anticipated that, as the manufacture of new cars equipped with ORVR expanded, Stage II recovery would no longer be necessary. Pet. at 2. "The Clean Air Act provides that Stage II would not apply in moderate nonattainment areas once USEPA had adopted ORVR regulations. . . ." *Id.*, citing 42 U.S.C. § 7521(a)(6). The Clean Air Act further provides that the USEPA Administrator may revise or waive Stage II requirements in serious, severe, and extreme nonattainment areas when ORVR systems had attained widespread use." Pet. at 2, citing 42 U.S.C. § 7521(a)(6).

The Agency in its recommendation notes that USEPA has not determined that ORVR has attained widespread use in the Chicago nonattainment area. Rec. at 6. Nonetheless, the Agency notes that, because Ford manufactures only vehicles equipped with ORVR at the Plant, Ford is "ahead of the curve." Rec. at 6. Since Ford has effectively reached the point of "widespread use" contemplated by the Clean Air Act, the Agency believes that adequate justification exists for the adjusted standard. *See* Rec. at 7; 42 U.S.C. §7521(a)(6).

Ford states that, in adopting Section 218.586, the Board sought to address the issue of the emission of VOM released during vehicle fueling. Now that vehicles' ORVR systems effectively capture those emissions, the factors considered and addressed by the Board in adopting Stage II requirements no longer exist. Ford Brief at 2. In his testimony at hearing, John Baguzis asserts that, with an equivalent if not superior control device now in place to control refueling vapor, the regulatory environment is "substantially different today" from that at the time of adopting Stage II regulations. Tr. at 27.

EFFORTS TO ACHIEVE COMPLIANCE AND ALTERNATIVES

The Plant's Stage II vapor recovery system is approaching the end of its life. Pet. at 4. Although Ford in 1994 improved the system, it needs to be replaced if it is to continue complying with the requirements of the Board's motor vehicle fueling regulations. *Id.*; *see* 35 Ill. Adm. Code 218-586. Ford estimates the total capital and operating costs of a new Stage II system to be more than $81,000 per year. Pet., Exh. 4 (relying on USEPA Cost Control Manual); *see also* Tr., Pet. Exh. 1.

To its petition, Ford attached an exhibit estimating the cost of removing through Stage II those vapors not captured by the required ORVR systems. Pet., Exh. 4. Because a new Stage II system would cost more than $81,000 to control 0.408 tons of VOM each year, the cost per ton of VOM removed would be nearly $200,000. *Id.* Ford argues that this "is clearly extraordinary and far beyond what the Board has already concluded is a reasonable cost for installation of Stage II vapor recovery." Pet. at 6, citing Stage II Vapor Recovery in the Metro-East Area: Repeal of 35 Ill. Adm. Code 219.586, R93-28 (Feb. 17, 1994).

In its recommendation, the Agency accepted Ford's calculation of these costs and characterization of them as "inordinately expensive." Rec. at 4-5. Considering the cost of replacing the Stage II system and the minimal environmental impact of relying solely on ORVR, the Agency "believes Ford makes a reasonable request for an adjusted standard." *Id.*

In his testimony for Ford at hearing, John Baguzis explained that Ford in its petition based its cost calculations on a 98% capture efficiency in line with the ORVR systems in the vehicles manufactured at its plant. Tr. at 19. Baguzis further explained that, because the federal statute requiring ORVR systems and language Ford proposed for an adjusted standard both refer to 95% efficiency, Ford re-calculated those costs based on that 95% figure. Tr. at 19-20. That re-calculation showed that the ORVR systems would annually remove 20.54 tons of VOM, allowing 1.08 tons of VOM potentially to be released on an annual basis into the environment. Tr., Pet. Exh. 1. Also operating with a capture efficiency of 95%, a Stage II system would annually remove 1.03 tons of VOM, allowing 0.054 tons of VOM annually to be emitted to the

environment. *Id.* Again based on annual costs for the system of more than $81,000, a new Stage II system would still result in an annual cost per ton of VOM removed of more than $79,000. *Id.* Baguzis characterized this as "an exorbitant sum to reduce a small amount of VOC [VOM]." Tr. at 25.

IMPACT ON THE ENVIRONMENT

Ford states that the Stage II and ORVR systems compete with one another to capture gasoline vapor displaced during vehicle fueling, which renders each less effective. Pet. at 7. The Agency notes that these two systems "can be incompatible if operated simultaneously," with the result that gasoline vapors are not effectively captured or controlled. Rec. at 4. As one specific example, the Agency notes that, when an ORVR-equipped vehicle is fueled where there is a Stage II system, then saturated gasoline vapors are not available at the fill spout because the ORVR system captures nearly all of them. *Id.* As a result, fresh air is drawn into the storage tank, resulting in increased evaporation and vapor pressure (*Id.*), and "[i]ncreased pressure in the tank causes excess vapors to be released into the atmosphere." *Id.* Jerry Clark of the Agency generally echoed this observation in his testimony at hearing. Tr. at 34-35. In his testimony at hearing, Baguzis described a different form of this competition between the two systems. Tr. at 28. If, as a result of the operation of the ORVR system, the vapor concentration is too low to trigger a flame when it enters the Stage II system's flare, then gasoline vapors could be emitted directly into the atmosphere. *Id.* In addition to the gasoline vapors, the Stage II system also releases emissions of nitrogen oxides and carbon monoxide from constant use of a pilot light that burns natural gas. *Id.*; Pet. at 7-8.

Ford notes that new federal emissions models apply a 95% refueling emissions reduction credit for ORVR-equipped vehicles. Pet. at 8; Pet., Exh. 8 (MOBILE6.1 and MOBILE6.2 mobile source emissions model). In its previous MOBILE5 emissions model, USEPA noted that, "where Stage II is in place and on-board-equipped vehicles begin to enter the fleet, the control is dominated by onboard, which is generally more effective than Stage II." Pet., Exh. 9 at 2-37. Furthermore, Ford notes that USEPA has determined, for sites used exclusively for the fueling or refueling of ORVR-equipped vehicles, "ORVR fully displaces the need for Stage II vapor recovery." Pet. at 8; Pet., Exh. 10 (67 FR 45909 (July 11, 2002)). Ford concludes on the basis of these authorities that the ORVR system is at least as good as, if not superior to, the existing Stage II system satisfying the requirements of Section 218.586. Pet. at 8.

In addition, Ford argues that ORVR-equipped vehicles inherently improve the environment. Their onboard systems remove gasoline vapors even in areas that are not required to implement Stage II systems. Pet. at 8. In addition, Ford argues that an adjusted standard would allow it to discontinue the use of its Stage II flare, which would eliminate the emissions resulting from its operation. *Id.*

Ultimately, the Agency accepts Ford's position that, even after removal of the existing Stage II system, "100% use of ORVR [in] initial fuel fill operations will not have a negative impact on air quality." Rec. at 6, *see* Pet. at 8. The Agency further notes that, because the plant is an assembly facility, Ford can guarantee that all vehicles fueled there are ORVR-equipped. Rec. at 7.

CONSISTENCY WITH FEDERAL LAW

The Agency notes in its recommendation that the Board may grant the proposed adjusted standard consistent with federal law allowing states to implement and revise air quality standards subject to USEPA approval. Rec. at 8, citing 42 U.S.C. § 7410. The Agency further notes that the Board exercises authority given to the states under the Clean Air Act when it follows its adjusted standard procedure in the area of air emission regulations. Rec. at 8. The Agency states that it will further comply with federal law by submitting an adjusted standard granted by the Board to USEPA as a SIP revision. *Id.*; *see* Pet. at 10.

BOARD DISCUSSION AND ANALYSIS

Substantially Different Factors

Based on the record in this matter, the Board finds that the "factors relating to the petitioner are substantially and significantly different than the factors relied upon by the Board in adopting the general regulation applicable to the petitioner." 415 ILCS 5/28.1(c)(1) (2004). As Ford notes, when the Board adopted Section 218.586 to control vapor during gasoline dispensing, ORVR systems were not required and were not installed on vehicles built at the Plant. Ford Brief at 2; *see* Pet. at 2. Ford consequently installed and upgraded a Stage II vapor recovery system in order to comply with the regulation. Pet. at 4. Since that time, federal law has required that Ford incorporate ORVR into new passenger vehicles. Pet. at 2. Now that all vehicles produced by Ford at the Plant contain ORVR (Pet. at 3), that vapor is recovered with at least 95% efficiency by the systems onboard those vehicles. Accordingly, the Board finds that Ford's compliance with federal law requiring ORVR systems to control vapor during gasoline refueling of the vehicles it manufacturers is a factor substantially and significantly different than the factors relied upon by the Board in adopting Stage II requirements at 35 Ill. Adm. Code 218.586. Moreover, the possibility of simultaneous operation and incompatibility of the Stage II and ORVR systems was not addressed in the 1992 proceeding with which the Board adopted Section 218.586. *See* Stage II Gasoline Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 215, 218, and 219, R 91-30, slip op. at 5-8 (Aug. 13, 1992).

Efforts to Achieve Compliance and Alternatives

Particularly in light of the findings below with regard to environmental impact, the Board finds that Ford has demonstrated that there is no economically reasonable and technically feasible means now available for Ford to comply with the regulation of general applicability. Ford notes that the ORVR required by the Clean Air Act has made the Stage II system required by Section 218.586 obsolete. Ford Brief. at 2. Nonetheless, the one alternative to the proposed adjusted standard is replacement of the existing Stage II system that Ford states is nearing the end of its life. Pet. at 4. Assuming that the ORVR system controls 95% of potential VOM emission, that alternative would result in annual costs of more than $79,000 per ton of VOM removed. The Agency in its recommendation concurs that the cost of removing the gasoline vapors not captured by the ORVR system would be "inordinately expensive." Rec. at 4. The

Board thus finds that the substantially and significantly different factors relating to Ford justify the proposed adjusted standard. *See* 415 ILCS 5/28.1(c)(2) (2004).

Impact on the Environment

Based on the record in this matter, the Board concludes that the granting of an adjusted standard will have no adverse environmental impact. Because both the Stage II and ORVR systems are designed to capture at least 95% of gasoline vapors resulting from motor vehicle fueling, and because competing systems may compromise one another's effectiveness, relying exclusively on ORVR is at least the equivalent of, and possibly superior to, the Stage II system now required by the Board's regulations. The Agency concurs that ORVR and Stage II serve the same function. Consequently, the Board finds that the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting Section 218.586. *See* 415 ILCS 5/28.1(c)(3) (2004).

Consistency with Federal Law

The Board finds that federal law is no bar to granting the requested relief. The Board notes that it exercises authority given to the states under the Clean Air Act when it follows its adjusted standard procedure in the area of air emission regulations. The Board further notes that the Agency acknowledges that revising the Illinois SIP requires USEPA approval. The Agency has stated that, "[i]f the requested adjusted standard is adopted by the Board, Illinois EPA has the authority and will submit the adjusted standard to USEPA as a SIP revision, thus complying with federal law." Rec. at 8. Accordingly, the Board finds that granting the adjusted standard is consistent with federal law. *See* 415 ILCS 5/28.1(c)(4) (2004).

CONCLUSION

For the reasons described above, the Board finds that Ford has provided sufficient justification under Section 28.1 of the Act for an adjusted standard. 415 ILCS 5/28.1 (2004). The Board grants Ford relief from Section 218.586 of the Board's air quality regulations (35 Ill. Adm. Code 218.586) at Ford's Chicago assembly plant as described in the order below.

While the Agency proposed a condition requiring that "Ford shall operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act and other applicable regulations not otherwise discussed herein" (Rec. at 5), and Ford has agreed to its terms (Ford Reply at 2), the Board finds that the proposed condition is unnecessary and declines to include it in its order below. Ford is obligated to comply with all relevant statutes and regulations whether or not the Board makes that obligation explicit in an order granting a petition for an adjusted standard.

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

ORDER

Effective September 1, 2005, the Board grants Ford Motor Company an adjusted standard from 35 Ill. Adm. Code 218.586 for its Chicago Assembly Plant located at 12600 South Torrence Avenue, Chicago, subject to the following conditions:

1. The Ford Motor Company Chicago Assembly Plant shall not be subject to the requirements of 35 Ill. Adm. Code 218.586, so long as the vehicles fueled at the Chicago Assembly Plant are equipped with onboard vapor recovery systems certified by the United States Environmental Protection Agency to capture a minimum of 95% of the gasoline vapor displaced during fueling.

2. Ford shall file an application to revise its Clean Air Act Permit Program permit to reflect the presence of onboard refueling vapor recovery in all assembled vehicles in lieu of the existing Stage II vapor recovery system.

3. Ford shall operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code 218, including but not limited to, Subpart Y.

4. The relief granted in this proceeding is limited to the Stage II recovery system at the Plant as of April 8, 2004.

5. Ford shall continue to report all annual emissions to the Illinois EPA as required by the requirements of 35 Ill. Adm. Code 254.

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) (2004); *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 opinion and order on September 1, 2005, by a vote of 5-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board