

ILLINOIS POLLUTION CONTROL BOARD
March 20, 1980

IN THE MATTER OF:)
STANDARDS OF PERFORMANCE FOR) R80-4
NEW STATIONARY SOURCES)

RESOLUTION AND ORDER OF THE BOARD (by Mr. Dumelle):

On December 16, 1975 the United States Environmental Protection Agency (USEPA) promulgated amendments to the general provisions of 40 C.F.R. Part 60, Subpart A (40 FR 58416). These amendments were intended to clarify the definition of "modification" and expand the definition of "stationary source" in Section 111(a) of the Clean Air Act.

Based on these interpretive definitions, 40 C.F.R. §60.14(d) allowed an existing facility to undergo a physical or operational change but not be considered modified if emission increases associated with the physical or operational change were offset by emission decreases of the same pollutant from other affected and existing facilities at the same stationary source. This is referred to as the "bubble concept."

On January 27, 1978 the United States Court of Appeals for the District of Columbia Circuit rejected the bubble concept as a means of determining if a modification to an existing facility had occurred for the purpose of applying standards of performance under Section 111 of the Clean Air Act (ASARCO v. USEPA, 578 F. 2d. 319). On January 23, 1980 USEPA responded by deleting those portions of 40 C.F.R. §60.14 which implement the bubble concept and deleting the definition of "stationary source" in 40 C.F.R. §60.2. USEPA stated that henceforth for the purpose of interpreting the regulations in 40 C.F.R. 60, the term "stationary source" shall have the same meaning as it is defined in Section 111 (a)(3) of the Clean Air Act. In addition the definition of "capital expenditure" in 40 C.F.R. §60.2 was amended to provide a qualification that when computing the total expenditure for a physical or operational change to an existing facility, that expenditure must not be reduced by any "excluded additions" as defined by IRS Publication 534 for federal tax purposes. Finally the reference to Section 119(d)(5) of the Clean Air Act in 40 C.F.R. §60.14 (e) was changed to refer to Section 111(a)(8) to reflect changes in the 1977 Clean Air Act Amendments. (45 F.R. 5616, January 23, 1980).

ORDER

Pursuant to the mandatory provisions of Section 9.1 (c) of the Environmental Protection Act, the Board hereby adopts the above referenced amendments to Title 40, Part 60, Subpart A of the Code of Federal Regulations.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Resolution and Order were adopted on the 20th day of March, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board