

ILLINOIS POLLUTION CONTROL BOARD  
March 10, 1988

IN THE MATTER OF: )  
 )  
PETITION TO AMEND 35 ILL. )  
ADM. CODE PART 214, SULFUR ) R86-31  
LIMITATIONS (CIPS Coffeen )  
Generating Station) )  
 )

PROPOSED RULE. SECOND NOTICE.

PROPOSED OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a regulatory proposal filed by Central Illinois Public Service Company (CIPS) on July 21, 1986. Through its proposal, CIPS is seeking relief for its Coffeen Generating Station (Coffeen) from the requirement of 35 Ill. Adm. Code 214.184, which establishes an emission limitation for sulfur dioxide (SO<sub>2</sub>) in any one hour. Section 214.184 imposes an emission limit on Coffeen of 55,555 pounds (lbs.) of SO<sub>2</sub> in any one hour. CIPS is proposing that Coffeen be exempt from that standard and instead be subject to emission standards of 65, 194 lbs. of SO<sub>2</sub> in any one hour and 7.29 lbs. of SO<sub>2</sub> per million British Thermal Units (mmbtu) of heat input. The Illinois Environmental Protection Agency (Agency) neither opposes nor supports CIPS's proposal. (R. 85).

On October 29, the Board proposed a rule for First Notice. That proposed rule was published in the Illinois Register on November 20, 1987. 11 Ill. Reg. 18925. In this Opinion, the Board will merely address comments that it has received during the First Notice period. The Board notes that the Illinois Environmental Protection Agency (Agency) filed no comment. This Opinion should be interpreted as supplementing the Board's First Notice Opinion, and to the extent that the two Opinions conflict, this Opinion shall supercede the First Notice Opinion.

CIPS' Comments

CIPS first expresses concern over the wording of the proposed rule which conditions the applicability of the rule to the exclusive use of coal from Monterey's No. 1 Mine. CIPS states that there are circumstances in which CIPS might be unable to use Monterey coal exclusively but would still wish to be subject to the proposed rule's emission limitations. For example, CIPS points to a strike or natural disaster at the mine which may temporarily interrupt the mine's productivity, thereby not allowing CIPS to utilize its coal. Similarly, an anomaly in Monterey coal seam might temporarily force Monterey to blend the Monterey coal with lower sulfur coal in order to meet the proposed rule's emission limitations. Finally, CIPS claims that

when nearing the end of contract with Monterey, it may need to perform test burns with coal from a different source. According to CIPS, the proposed rule is written to preclude such test burns.

CIPS also would like the Board to clarify its position with regard to the period of applicability of the proposed rule. CIPS is concerned that if it has to use some coal which is not from the Monterey mine, the proposed rule will terminate permanently.

CIPS has proposed the following change for subsection (a), which it believes resolves all of these issues. (The underlined portion is the proposed addition):

The emission standards of this subsection shall apply only if the requirements of subsections (b), (c), and (d) are fulfilled. Notwithstanding any other limitation contained in this Part, whenever, except if necessitated by force majeure, the coal burned is mined exclusively from the mine that is presently known as Monterey Coal Company's No. 1 Mine located south of Carlinville, emission of sulfur dioxide from Units 1 and 2 at the Central Illinois Public Service Company's (CIPS) Coffeen Generating Station (Coffeen), located in Montgomery County, shall not exceed either of the following emission standards:

(P.C. #11, p. 4-5)

According to CIPS these changes are needed:

The addition of the force majeure clause will address those situations that prevent 100% use of Monterey coal for reasons beyond CIPS' control. The addition of the word "whenever" will address situations, such as a test burn, not covered by the force majeure--in this situation the applicable limit would revert to the general, more restrictive standard when the exclusivity requirement was not being met but once compliance with the exclusivity standard can be restored the site-specific limit again would be applicable.

(P.C. #11, p. 5)

It was the intention of the Board to draft the rule so that CIPS would be subject to a less stringent emission standard only when it used Monterey coal exclusively. It is not the Board's

position that the less stringent emission standards would be lost forever if CIPS failed to utilize Monterey coal in a continuous and exclusive manner. That is, during any time that CIPS does not exclusively use Monterey Coal, the general emission limitation will once again be applicable. However, once Monterey does resume an exclusive use of Monterey coal, the site-specific limitation of proposed Section 214.562 will once again apply. Consequently, the Board agrees with CIPS that the word "whenever" further clarifies the rule.

The Board is not convinced, though, that it should allow CIPS to be subject to the less stringent emission standards if CIPS must utilize non-Monterey coal due to circumstances beyond CIPS's control. CIPS states that "the record demonstrates that the site-specific emission limit will not cause a violation of any applicable ambient standard so, for that purpose the source of the coal is irrelevant." (P.C. #11, p. 5). CIPS seems to imply that the only relevant consideration in granting site-specific emission relief is the resulting impact on ambient air quality. The Board is not proposing relief for CIPS merely because CIPS' modeling studies concluded that the ambient air standard would not be violated if CIPS were granted relief. Rather, the Board is proposing to grant CIPS relief due to the totality of the circumstances encountered here. Much of the justification for the proposed rule concerns the negative economic impacts which would result if CIPS could no longer utilize Monterey coal. Throughout this proceeding, CIPS has discussed the hardships which Monterey would incur if CIPS were denied relief. In short, CIPS has tied its own request for regulatory relief to the viability of the Monterey mine. CIPS should not be allowed to break that connection during circumstances which are "beyond CIPS' control."

According to Black's Law Dictionary, Fifth Edition, the term force majeure is "common in construction contracts to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care." However, unlike a contract, the proposed rule only binds one person, CIPS. Given that fact, the use of the term force majeure would only describe circumstances which are beyond CIPS' control. It would not describe circumstances that are beyond Monterey's control.

Monterey is not owned by CIPS. To the extent of the Board's knowledge, CIPS does not have any legal influence over Monterey beyond present contractual arrangements. It seems to the Board that the fate of Monterey's mining operations would always be beyond CIPS' control.

The Board can envision various circumstances which would halt the supply of coal to CIPS and which would also be beyond CIPS's control. Monterey could breach its contract to supply

coal to CIPS. Monterey could sell the mine to another company which would refuse to honor the CIPS coal supply contract. A strike could cease production, indefinitely, at Monterey. The owners of Monterey could shut down the mine due to failing profits. Although these scenarios are merely hypothetical, they illustrate circumstances in which CIPS would continue to be subject to the less stringent emission standards if the force majeure language were included in the proposed rule.

Since the intent of the Board is to have the less stringent emissions limitations apply only when CIPS is using Monterey coal exclusively, the Board will not include the term force majeure in the rule.

CIPS' next major objection involves the proposed rule's requirement that CIPS conduct an ambient air monitoring and modeling study in order to verify that the increased emissions do not violate any primary or secondary sulfur dioxide ambient air quality standard.

CIPS claims that this requirement, set-forth in the First Notice version of the proposed rule, could create an impossible dilemma for CIPS. That version of the rule requires that CIPS begin an ambient air monitoring and modeling program six months after the effective date of the rule. CIPS' concerns stem from the federal enforcement case currently being litigated against CIPS. CIPS anticipates "that any order entered by the District Court will require CIPS to comply with the 55,555 pound per hour limitation probably for a fixed period of two years or, possibly, until a SIP revision is approved by USEPA authorizing a higher limitation." Therefore, CIPS concludes that its operations at higher levels during the monitoring period, would likely be in violation of a District Court order. Also, CIPS claims that if a settlement is not reached by the USEPA, a District Court decision will likely not be issued within six months of the effective date of the rule. Consequently, CIPS claims that if it is going to "comply" with the Board's Order, by emitting at higher emission levels, it will violate the SIP. CIPS also asserts that if it complies with the SIP, it will lose the site-specific rule. CIPS states, and the Board generally agrees, that a SIP revision approval concerning the proposed rule will likely not be granted within six months of the effective date of the rule. (P.C. #11, p. 7-10).

Also, CIPS claims that the ambient air monitoring and modeling will likely make the new standard "conditional" in the eyes of the USEPA. According to CIPS, USEPA's reaction to such a requirement is unclear. However, CIPS does blame an ambient air monitoring and modeling requirement for the delay in USEPA's SIP revision approval for Illinois Power Company's Baldwin Station SO<sub>2</sub> emission standards. According to CIPS, this delay influenced CIPS in choosing to pursue an alternative SO<sub>2</sub> emission standard via a site-specific rulemaking rather than determination pursuant to Section 214.185. (P.C. #11, p. 9-10).

Finally, CIPS argues that the ambient air monitoring and modeling is unnecessary. CIPS states that the modeling results already presented to the Board are far more conservative than what would be generated from a monitoring study. According to CIPS, the Board should consider this conservatism when viewing the fact that CIPS' models showed a concentration level close to the three-hour ambient air standard. (P.C. #10-11). CIPS asserts that the inherent limitations on monitoring studies, including the determination on where to locate the monitors, are reasons why monitoring is rarely done for isolated sources. (P.C. #11, p. 12).

It is still the Board's position that the ambient air monitoring and modeling requirement of the proposed rule has value irrespective of the fact that CIPS' Coffeen Generating Station is located in a rural area. Such a requirement is consistent with the procedures for determining alternative emission standards pursuant to Section 214.185. The Board does not view the emission standards of subsection (a) of the proposed rule as being contingent upon the results of the ambient air monitoring and modeling. Like the stack tests, the purpose of the monitoring and modeling requirement is to provide more information which can be utilized in evaluating the actual impact of CIPS' emissions on the environment. This is especially important since the proposed rule will allow CIPS to emit 17% more SO<sub>2</sub> than what is presently allowed. The Board has substituted the word "demonstrate" for the word "verify" in an effort to clarify the Board's position.

Much of CIPS' arguments against the ambient air monitoring and modeling program merely involve the timing of program not its utility. Essentially, CIPS is concerned that it will be required by the rule to conduct the monitoring and modeling program at a time when CIPS might not be able to emit SO<sub>2</sub> at the elevated levels allowed by the proposed rule. That is, the situation could exist when CIPS may be permitted by the Agency to emit 65,194 pounds of SO<sub>2</sub> in any one hour but it will in fact only be emitting 55,555 lbs. per hour due to the constraints of a federal court decision. In light of this potential predicament, the Board will change the timing of the proposed rule's monitoring and modeling requirement.

CIPS is currently operating under a load limitation of 765 net megawatts (MW) in order to achieve compliance with 55,555 lbs. standard. The Board will require CIPS to begin its ambient air monitoring and modeling program 6 months after it begins operating at a level in excess of 765 net MW. By linking the timing of the monitoring and modeling program to an event within CIPS' control, CIPS will not be forced into non-compliance with either a Board rule or a federal court order.

The last issue raised by CIPS concerns the stack testing required imposed by the First Notice version of the rule. That version of the rule requires that CIPS conduct a stack test prior to each operating permit renewal. The reasons for this requirement included the lack of frequency in stack testing in the past as well as the great disparity in the results of the 1974 stack test and the 1986 stack test.

CIPS essentially agrues that the 1974 stack test was an anomoly and that the 1986 stack test results are consistent with what would normally be expected. As a result, CIPS claims that additional stack tests will likely not show any different results when compared with 1986 test results. Also, CIPS states that the Board should not interfere with the Agency's discretion in requiring stack tests.

The Board agrees with CIPS that the requirement for stack testing and the frequency of such stack testing should, in general, be left to the Agency's discretion. Upon reconsideration, the Board finds that it is not necessary to require CIPS to conduct stack tests prior to every permit renewal in the future. However, the Board still believes that stack tests should be conducted periodically and that they are necessary to verify that actual SO<sub>2</sub> emissions are below the allowable limits. The Board will alter the proposed rule to require that a stack test be conducted no later than six months after CIPS begins operating at a level in excess of 765 net megawatts. This provision does not preclude the Agency from requiring additional stack tests before or after that date.

#### Other Comments

The president of Monterey, G.E. Tilman, filed a comment in support of the Board's proposed rule. In the comment, Tilman states:

Monterey appreciates the stipulation that the proposed revised emission limits apply only if the coal burned at Coffeen is mined exclusively from Monterey No. 1 Mine. This stipulation will prevent severe economic disruption to Monterey employees and the communities in which they live.

\* \* \*

In closing, I wish to thank the Board for its consideration of the economic impact of this rulemaking procedure on Monterey employees. Monterey endorses the proposed rule and urges the Board to adopt it in final form exactly as written.

Also, the comment points out that all of the coal shipped by Monterey to CIPS' Coffeen Generating Station is washed prior to shipment. (P.C. #3).

The Board received nine other public comments, all of which were in support of the proposed rule. All but one of these additional commenters identified themselves as either an employee of Monterey or a family member of an employee.

On February 18, 1988, the Small Business Office of the Department of Commerce and Community Affairs filed a public comment with the Board. The Board hereby accepts the comment as P.C. #14. The comment states that the proposed rule would have no effect on small businesses regulated by the rule. The Board notes that the proposed rule only regulates CIPS which has not claimed to be a small business.

#### ORDER

The Board proposes the following amendments for Second Notice to be filed with the Joint Committee on Administrative Rules.

TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE B: AIR POLLUTION  
 CHAPTER I: POLLUTION CONTROL BOARD  
 SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS  
 FOR STATIONARY SOURCES

PART 214  
 SULFUR LIMITATIONS  
 SUBPART X: UTILITIES

Section 214.562      Coffeen Generating Station

- a) The emission standards of this subsection shall apply only if the requirements of subsections (b), (c), and (d) are fulfilled. Notwithstanding any other limitation contained in this Part, whenever the coal burned is mined exclusively from the mine that is presently known as Monterey Coal Company's No. 1 Mine located south of Carlinville, emission of sulfur dioxide from Units 1 and 2 at the Central Illinois Public Service Company's (CIPS) Coffeen Generating Station (Coffeen), located in Montgomery County, shall not exceed either of the following emission standards:
- 1) 29,572 kilograms of sulfur dioxide in any one hour (65,194 lbs/hr); and
  - 2) 11.29 kilograms of sulfur dioxide per megawatt-hour of heat input (7.29 lbs/mmbtu).

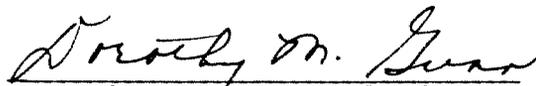
- b) CIPS shall conduct an ambient sulfur dioxide monitoring and dispersion modeling program designed to demonstrate that the emission standards of subsection (a) will not cause or contribute to violations of any applicable primary or secondary sulfur dioxide ambient air quality standard as set forth in Section 243.122. Such ambient monitoring and dispersion modeling program shall be operated for at least one year commencing no later than 6 months after Coffeen begins to operate at a level in excess of 765 net megawatts.
- c) No more than 15 months after the commencement of the ambient monitoring and dispersion modeling program of subsection (b), CIPS shall apply for a new operating permit. CIPS shall submit to the Environmental Protection Agency (Agency), at the time of the application, a report containing the results of the ambient monitoring and dispersion modeling program of subsection (b) and the results of all relevant stack tests conducted prior to the report's submission.
- d) No later than six months after Coffeen begins to operate at a level in excess of 765 net megawatts, a stack test shall be conducted in order to determine compliance with emission standards set forth in subsection (a). After the stack test is conducted, the results shall be submitted to the Agency within 90 days. The requirements of this subsection do not preclude the Agency from requiring additional stack tests.

(Source: Added at 11 Ill. Reg. ,  
effective )

IT IS SO ORDERED.

J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion and Order was adopted on the 10<sup>th</sup> day of March, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board