ILLINOIS POLLUTION CONTROL BOARD
March 19, 1987

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY (Meredosia Unit 3),

Petitioner,

v.

PCB 86-147

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a September 12, 1986 petition to review a certain condition imposed by the Illinois Environmental Protection Agency (Agency) in the renewal of the air operating permit (I.D. No. 137805AAA) for Meredosia Station Unit 3 filed by Central Illinois Public Service Company (CIPS). That renewed permit, which was issued by the Agency on August 8, 1986, includes Condition 2 which limits emissions of sulfur dioxide to 6.0 lbs/MBtu of actual heat input. CIPS alleges that there is no such applicable limit and that its inclusion in the permit is improper. Hearing was held on November 12, 1986, at which the parties, but no members of the public, appeared. No testimony was presented at hearing, both parties agreeing that the only issue involved in this case is purely a question of law which would be addressed in the briefs. CIPS filed its initial brief on December 10, 1986, to which the Agency responded on January 7, 1987 and CIPS replied on January 21, 1987.

A plain reading of the Board's present rules results in the following analysis. There is no disagreement that Meredosia Station Unit 3 (Unit 3) is an existing solid fuel combustion emission source which is a large source of sulfur dioxide and is located outside the Chicago, St. Louis or Peoria major metropolitan areas. Therefore, Section 214.143 is applicable and limits emissions as provided by Subpart E. In turn, Section 214.182 of Subpart E prohibits emissions from such sources to exceed the emissions determined by Sections 214.183-214.185, whichever is applicable. There is no indication in the record that any petition was ever made pursuant to Section 214.185. Therefore, the applicable limitation must arise from either Section 214.183 or 214.184. Neither of these sections establish a 6.0 lb/MBtu standard. However, Section 214.186 states as follows:

Section 214.186 New Operating Permits

> No owner or operator of a fuel combustion emission source whose sulfur dioxide emission limitation is determined by Section 214.142, 214.183 or 214.184 shall cause or allow the total emissions of sulfur dioxide into the atmosphere from all fuel combustion emission sources owned or operated by such person and located within 1 mile radius (1.6 km) from the center point of any such fuel combustion source to exceed the level of sulfur dioxide emissions allowed under the previous Rule 204 (effective April 14, 1972 until December 14, 1978) without first obtaining a new operating permit from the Agency. The application for a new operating permit shall include a demonstration that such total emissions will not violate any applicable PSD increment.

Since Unit 3's sulfur dioxide emission limitation is determined by either Section 214.183 or 214.184, this section is applicable. Therefore, CIPS has two alternatives: Unit 3 must either meet the sulfur dioxide emission allowed under the "previous Rule 204" or must apply for a new operating permit and demonstrate that the total emissions are consistent with prevention of significant deterioration (PSD) requirements. Since the latter has not been done, the previous Rule 204 limitations must be met. The applicable portion of the rule is Rule 204(c)(1)(B)(i) which states as follows:

> **(B) Existing Fuel Combustion Sources Located Outside the Chicago, St. Louis (Illinois) and Peoria Major Metropolitan Areas.** No person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any existing fuel combustion source, burning solid fuel exclusively, located outside the Chicago, St. Louis (Illinois) and Peoria major metropolitan areas, to exceed the following:
>
> (i) 6.0 pounds of sulfur dioxide per million btu of actual heat input, on and after May 30, 1975.

Thus, a plain reading of the Board's rules results in the conclusion that the Agency properly included a 6.0 lb/MBtu standard as a condition of Unit 3's permit. This is not to say that there is an independently enforceable limit of 6.0 lb/MBtu applicable to any boiler. Rather, the mechanism established by

these rules is designed to allow the Agency to impose that limit in a permit based on an application which fails to otherwise demonstrate that the emissions are consistent with federal PSD rules. Instead of denying the permit outright due to that failure, the Agency can include that condition (which is known to comport with the PSD rules based upon modeling and USEPA acceptance of that level), thereby allowing a boiler, such as Unit 3, which can meet that limitation, to continue to operate without performing the necessary studies to demonstrate consistency with the PSD requirements.

CIPS argues, in essence, that these rules cannot mean what they appear to mean since the Board eliminated the 6.0 pound standard in 1978, that USEPA understood that such limit was eliminated, and that the Board's 1980 amendment to the rules did not reinstate that limit. There is no dispute that the Board's 1978 amendments to the sulfur dioxide rules eliminated the 6.0 pound limit for large sources. [See, In the Matter of Proposed Amendments to Chapter 2, Part II, Sulfur Dioxide Emissions, R75-5 and R74-2, 32 PCB 295 (Dec. 14, 1978) and 32 PCB 593 (February 15, 1979)]. On page 2 of its initial brief, CIPS states as follows:

> Even a cursory review of the Board Order and Opinion reveals that the Board intended to eliminate the existing 6.0 pound limit:
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> > The Board has eliminated the prior Rule 204(c)(1)(B) requirement that the sources located outside the three large MMA's [Chicago, Peoria and St. Louis], in addition to meeting the mass emission limitations, meet a SO_2 standard of 6.0 lbs/MBtu.
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> Board Opinion, p. 4. The Board explained further that:
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> > [a]ll sources located outside the three largest MMA's were previously required to comply with a pounds per million btu SO_2 standard of 6.0 in addition to the pounds per hour standard determined by Rule 204(e)... This requirement has been eliminated because the record indicated it is not technically or economically feasible for all sources to meet the standard by washing Illinois coal...

> Board Opinion, p. 10 (citations omitted; emphasis added).

The Board notes, however, that the rulemaking also included Rule 204(e)(4) which stated that:

> No owner or operator of a fuel combustion emission source whose sulfur dioxide emission limitation is determined by Rule 204(c)(1)(B) or Rule 204(e)(1) shall cause or allow the total emissions of sulfur dioxide into the atmosphere from all fuel combustion emission sources owned or operated by such person and located within a 1 mile radius (1.6 Km) from the center point of any such fuel combustion source to exceed the level of sulfur dioxide emissions allowed under the previous Rule 204(e) (effective April 14, 1972 until December 14, 1978) without first obtaining a new operating permit from the Agency. The application for a new operating permit shall include a demonstration that such total emissions will not violate any applicable PSD increment.

The basis for this provision is stated in the Board's R75-5 and R74-2 Opinion:

> However, as mentioned previously, Section 163 of the Clean Air Act as amended in 1977 requires that for any given area the maximum allowable increase in concentrations of SO_2 over the baseline concentration of SO_2 not exceed a certain amount, commonly known as the PSD increment. The U.S. Environmental Protection Agency, the Agency and Commonwealth Edison Co. expressed concern in public comments (P.C.#'s 52, 51 and 42, respectively) that the proposed regulations could in some cases allow sources to increase emissions and, therefore, possibly violate the PSD increment. Three rules which could conceivably result in increased emissions are the new Rule 204(e)(1) formula (see Ex. 25), Rule 204(e)(3) and the 6.8 lbs/MBtu optional standard for sources burning less than 250 MBtu/hr. Rule 204(e)(3) includes a requirement that sources seeking an alternate standard prove that they will not violate the PSD increment. We have also included in our adopted regulations Rule 204(e)(4), which precludes sources complying with the Rule

> 204(e)(1) formula or the 6.8 lbs/MBtu standard from increasing emissions without first obtaining a new operating permit from the Agency based on an application which proves that the PSD increment will not be violated. The Agency shall have the authority, as it does with other permit applications, to determine the details of what such an application should include. The Board notes that this record does not provide a basis for determining a method of allocating the increment among sources.
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> (32 PCB 302 and 303).

Thus, the Board clearly recognized that the relaxed emission standards had to be made consistent with PSD requirements, and Rule 204(c)(4) was added to ensure that the adopted rules were consistent with such requirements.

Despite the inclusion of Rule 204(e)(4), USEPA issued a proposed rulemaking on December 26, 1979 (44 Fed. Reg. 76308, attached as Exhibit A to the Agency's response brief), which stated at page 76309: "The proposed SIP revision [Rule 204(c)(1)(C)] eliminates the 6.0 lb. SO_2/MBTU cap for major sources (i.e., with heat input greater than 250 MBtu/hr) and requires these to comply with revised Rule 204(e)" (emphasis added). USEPA proposed to disapprove portions of the Illinois revisions, and specifically the elimination of 6.0 pound rule, because they relaxed emission limitations without acceptable assurance that the new limitations would not cause or contribute to violations of NAAQS or violate applicable PSD increments. (44 Fed. Reg. at 76310).

As a result of that notice, the Board realized that its rules adopted on December 14, 1978, contained "some inconsistencies due to typographical errors" which it proposed to correct by order dated February 7, 1980 (37 PCB 367-368). As the Board stated in its February 7, 1980 Proposed Order:

> Rule 204(e)(4), line 10, contains a reference to "previous Rule 204(e)..." The inclusion of the letter "e" is a typographical error; the phrase should read "previous Rule 204..." This is apparent from the beginning language of 204(e)(4): "No owner or operator of a fuel combustion emission source whose sulfur dioxide emission limitation is determined by Rule 204(c)(1)(B)..." Since Rule 204(c)(1)(B) replaces prior 204(e) and prior 204(c)(1)(B) for smaller sources, the reference to "previous Rule 204(e)" is

> inconsistent with the introductory language quoted above.

(37 PCB 367).

CIPS argues that the modification of the language "previous Rule 204(e)" to "previous Rule 204" went further than the Board intended in that the only basis for that change was to "subject small sources which could elect a 6.8 pounds per million btu limit" to the requirement of demonstrating consistency with the PSD program. This argument is apparently based upon the final sentence of the above-quoted language of the February 7, 1980 Proposed Order. That language, however, is nothing more than an example, and the reference to "smaller sources" should not be read to limit the effect of the modification to those sources. On the contrary, the fact that the 1980 modifications were premised upon deficiencies noticed by the USEPA regarding possible inconsistencies between the rules regarding both large and small sources and the PSD requirements, and the fact that the Board had recognized in its February 15, 1979 Opinion the necessity of consistency with those requirements, the Board concludes that the rules adopted on June 12, 1980 mean what they say.

Even if the Board were to have concluded that those rules did not express the Board's intent, the Board would be powerless to accept CIPS interpretation. The Board believes that the plain reading of the presently existing rules dictates affirmance of Condition 2 in that acceptance of CIPS position would require the Board to ignore the plain meaning of the rules and, in effect, amend them through construction rather than the usual rulemaking procedures. In a case where the Board's intent was clearly contrary to the express language of the rules adopted, the court reasoned as follows:

> The Attorney General urges that we accept the PCB interpretation and adopt a construction of the Air Pollution Rules based upon the intent of the drafters. We reject this contention. Interpretation and construction of an administrative agency's rules are governed by the same rules which are applicable to statutes. [Olin Corp. v. Environmental Protection Agency (5th Dist. 1977), 54 Ill. App. 3d 480, 483, 12 Ill. Dec. 380, 382, 370 N.E.2d 3, 5: May v. Illinois Pollution Control Board (2d Dist. 1976), 35 Ill. App. 3d 930, 933, 342 N.E.2d 784, 787]. Rules of construction are useful only where there is doubt as to the meaning of a statute, and a court may not alter that meaning beyond the clear import of the

> language employed therein. [Pielet Brothers Trading, Inc. v. Pollution Control Board (5th Dist. 1982), 110 Ill. App. 3d 752, 755, 66 Ill. Dec. 461, 464, 442 N.E.2d 1374, 1377]. To accept the PCB's interpretation of its Air Pollution Rules in the instant case would require us to ignore the plain language of those rules. Additionally... the PCB's interpretation, in effect, circumvents the usual rulemaking procedure and allows the PCB to amend a rule through construction. The fact is that the language utilized [is clear]. While this may well amount to an oversight, it is one which must be rectified by proper amendment of the rules. In the interim, the PCB is bound to follow the rules as stated. [Continental Grain Co. v. IPCB, 475 N.E.2d 1362 (Ill. App. 5 Dist. 1985)].

Finally, CIPS argues that if the 1980 modification of Rule 204(e)(4) was intended to reinstate the 6.0 pound limit, it used a "probably invalid method" to do so since the 1978 rules repealed the 6.0 pound limit, and the reinstatement would constitute a new rulemaking. (Reply Brief at 4). That being so, the argument continues, "that action clearly contravened both the statutory and constitutional requirements of notice and opportunity for hearing." (Reply Brief at 5).

The Board disagrees. First, as explained above, the Board did not reinstitute the 6.0 lb limitation. Rather, the Board has given the Agency the authority to impose such a condition in a permit as a backstop mechanism to ensure consistency with the federal PSD rules where such consistency has not otherwise been demonstrated. Second, the 1980 modifications were adopted in the same proceeding as the 1978 rules. Numerous hearings were held and proper notice given for those proceedings in compliance with the requirements of the Environmental Protection Act. Furthermore, the proposed 1980 modifications were published in the Illinois Register on February 29, 1980, thereby initiating the first notice period required by the Administrative Procedure Act. At that time comments on the proposal could have been submitted and hearings could have been requested. Neither occurred, and the Board proceeded to second notice and final adoption all in accordance with the Administrative Procedure Act. Thus, the rules were properly adopted, and CIPS final argument fails.

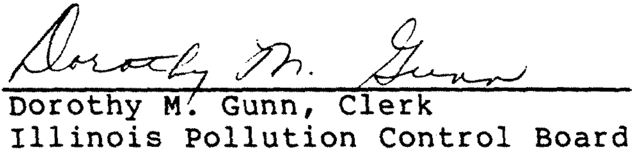
This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Illinois Environmental Protection Agency's imposition of Condition 2 in Permit I.D. No. 137805AAA issued on August 8, 1986 for the Meredosia Station Unit 3 owned by Central Illinois Public Service Company is hereby affirmed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of March, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board