

ILLINOIS POLLUTION CONTROL BOARD  
March 8, 1984

FORD MOTOR COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 83-105
	)	R83-36
ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

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

This matter comes before the Board upon a December 23, 1983 motion to dismiss filed by the Illinois Environmental Protection Agency (Agency) to which the Ford Motor Company (Ford) responded on January 3, 1984. The Agency states that it is in agreement with Ford that "when the Board adopted 35 Ill. Adm. Code §215.204(a)(1)" in R78-3,-4, "it relied on a mistake in the record," that mistake being that the United States Environmental Protection Agency (USEPA) based its Control Technique Guidelines for surface coating on a 40% transfer efficiency rather than the subsequently determined 30% efficiency (see USEPA memos regarding transfer efficiency in Ex. A of Ex. A of Ford's December 2, 1983 Amended Petition for Variance).

The Board agrees that when R78-3,-4 was adopted, the limitations of Section 215.204(a)(1) were intended to track the federal guidelines and that those federal guidelines were based upon a mistake of fact, upon which the Board, in turn, relied. The Board further agrees that the simplest solution to this problem is to allow the Agency to construe Section 215.204(a)(1) consistently with the federal guidelines. This is especially true since the Ford plant is the only plant affected by the rule.

Unfortunately, were the Board to accept the Agency's position, the Board would be condoning the practice of allowing effective rules to mean something other than what they say. While it is somewhat difficult to determine what is intended by the present rules, the Board finds that Ford has properly construed them, and as such, must seek variance or site-specific regulatory relief to avoid possible enforcement by the Agency or any citizen.


In short, the Board agrees that its present rule was based on inaccurate information and should be reconsidered, and that for a rule to be reconsidered, a rulemaking is necessary. The Agency cannot simply ignore the rule or construe it as requiring something other than what it requires.

The motion to dismiss is hereby denied.

It may be argued that this action elevates form over substance. However, the procedures for rulemaking established in the Environmental Protection Act were established so that rulemakings are subject to full public scrutiny and comments. To grant the Agency's motion to dismiss would avoid this public oversight. Even if the Agency's substantive position is ultimately found to be the correct one, the Board cannot condone improper procedures to reach the desired result.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 8<sup>th</sup> day of March, 1984 by a vote of 6-0.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board