

ILLINOIS POLLUTION CONTROL BOARD  
August 9, 1979

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
GENERAL MOTORS CORPORATION,	)	
a Delaware Corporation,	)	
	)	
Respondent,	)	PCB 74-475
	)	PCB 75-35
GENERAL MOTORS CORPORATION,	)	(CONSOLIDATED)
a Delaware Corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ANNE K. MARKEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;  
RICHARD S. FINN AND NORTON L. PENNY, FINN, VAN MELL & PENNEY, AND RICHARD J. KISSEL, MARTIN, CRAIG CHESTER & SONNENSCHNEIN, APPEARED ON BEHALF OF RESPONDENT GENERAL MOTORS.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

The matter before the Board concerns an enforcement action against Electro-Motive Division of General Motors Corp. (Electro-Motive) filed on December 17, 1974 (PCB 74-475) and General Motors' subsequent proposed counterclaim filed January 24, 1975. The counterclaim was accepted by the Board as a permit denial appeal, docketed as PCB 75-35, and consolidated with PCB 74-475 for hearing by order of the hearing officer. The Board, on its own motion, hereby consolidates these cases for purposes of decision.

The Complaint in PCB 74-475 alleges violation of Rule 103(b)(2) and Section 9(b) of the Environmental Protection Act (Act). The Complaint also alleges that Electro-Motive violated Rule 104 and Section 9(a) of the Act by not following

a compliance program while the facility operated in violation of Rule 203(g). The permit denial appeal action alleges that the action of the Environmental Protection Agency (Agency) in denying Electro-Motive's permit application was arbitrary and capricious. Hearings have been held, including a public hearing on June 27, 1979. A Stipulation and Proposal for Settlement was filed with the Board on June 27, 1979. A more complete representation of the lengthy procedural history of this case is found in the Stipulation.

One outstanding Motion for Modification of an Interim Order, filed on November 24, 1976 and stayed by Board Order on December 2, 1976, remains to be ruled upon. The Board hereby denies Electro-Motive's motion for Modification and affirms the Interim Order of October 14, 1976.

The subject of these proceedings is Electro-Motive's manufacturing plant located in McCook, Illinois. At issue in this case are three Babcock and Wilcox coal-fired spreader stoker boilers which are the principal supply of heat and the sole supply of process steam for the facility. These boilers are fully equipped with operating instrumentation which allow each boiler to perform at the maximum rate of efficiency and at the lowest possible emission rates. On February 5, 1974, the Agency denied an application for operating permits based on its analysis of stack tests which formed part of the permit application. The grounds for refusal were that the application did not prove compliance with Rule 203 (g)(1)(C). After submission of the application, Electro-Motive learned that clerical errors caused incorrect results. Subsequent tests demonstrated that Electro-Motive was marginally in technical violation of Rule 203(g)(1)(C).

In November, 1977 Electro-Motive conducted stack tests which indicated that the boilers were well within the emission standards of Rule 203(g)(1)(C). On the basis of these tests, the Agency issued operating permits on February 28, 1978; Electro-Motive is now in compliance with the Act. The parties agree that their differences had reasonable bases and that Electro-Motive's defense had been conducted in good faith (Stip., pp. 12-13).

The Board finds that it is in the best interests of the People of Illinois that this litigation come to an end. Electro-Motive now has operating permits and is performing in accordance with the Act. Because the violation of 203(g)(1)(C) was of a technical nature and did not significantly interfere with the health, welfare, and property of the People of Illinois, the Board will not assess a penalty. The Board accepts the Stipulation which is hereby incorporated by reference as if fully set forth herein, and finds Electro-Motive in violation of Rule 103(b)(2) and Section 9(b) of the Act.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

- 1) Electro-Motive Division of General Motors Corporation is found to have violated Regulation 103(b)(2) of Chapter 2: Air Pollution Control Regulations and Section 9(b) of the Environmental Protection Act.
- 2) The Interim Order herein of October 14, 1976, is hereby affirmed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9<sup>th</sup> day of August, 1979 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board