ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

IN THE MATTER OF:	)	
	)	
SULFUR DIOXIDE REGULATIONS,	)	R71-23
RULE 204(c)(1)(A) AND	)	
RULE 204(c)(1)(D) OF CHAPTER 2.	)	

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

The state's sulfur dioxide regulatory proceedings date back to 1971 (R71-23, Emission Standards). On April 13, 1972 the Board adopted the Order in R71-23, which Order in part set sulfur dioxide emission limitations for existing, exclusively solid fuel combustion, stationary sources located within the major metropolitan areas of Chicago, St. Louis (Illinois), and Peoria (Rule 204(c)(2)(A)) and those located outside these areas (Rule 204(c)(1)(D), previously Rule 204(c)(2)(B)).

In 1974, the Illinois Appellate Court for the First District in Commonwealth Edison Company v. PCB, 25 Ill.App.3d 271, 323 N.E.2d 84, reh den January 23, 1975, remanded these rules to the Board along with Rule 203(g)(1) regarding particulate emission limitations for existing, exclusively solid fuel combustion, stationary and nonstationary sources located within Illinois. The Court held the three rules to be invalid under §27 of the Illinois Environmental Protection Act (Act) because the Board did not consider the technological feasibility and economic reasonableness of compliance with these rules by a substantial number of affected sources by the deadline specified by the Board.

In 1976, the Illinois Supreme Court, hearing the appeal of that decision, affirmed the decision. (Commonwealth Edison Company v. PCB, 62 Ill.2d 494, 343 N.E.2d 459, reh den March 25, 1976.) The Court cited that from the proceeding R74-2 the Board acquired a wealth of new information regarding the need to modify Rule 204 and that in the proceeding R75-5 the Illinois Environmental Protection Agency (Agency) had proposed amendments to that rule. As amicus curiae, the United States Environmental Protection Agency (USEPA) had briefed the argument that the three remanded rules had correctly interpreted the technology-forcing intent of the Clean Air Act (42 U.S.C. §7401, et seq.).

On July 7, 1977 the Board readopted the three remanded rules of R71-23. In 1978, Ashland Chemical Company (Sherex) appealed that Order to the Third District Appellate Court in Ashland Chemical Company v. PCB, 64 Ill.App.3d 169, 381 N.E.2d

56. That Court invalidated the Board's readopting Order because it had been issued without additional hearings having been held in answer to the Supreme Court's reference in Edison to subsequently passed legislation requiring intermittent control systems (§§3(r) and 10(h) of the Act), to subsequently passed legislation requiring that the State conduct an economic impact study of these rules (§6 of the Act), and to the Board's consideration, in its readoption, of a report prepared by Mr. Sidney M. Marder for the Agency pursuant to a grant from the USEPA.

Three other lawsuits were filed appealing the Board's Order of July 7, 1977.[1] All three were consolidated in Illinois State Chamber of Commerce, et al. v. PCB, 67 Ill.App.3d 389, 384 N.E.2d 922 (1st Dist.1978). This Court held that hearings had been necessary to meet the mandates it had given in Edison (accord, Ashland, supra) and that incorporating the records of R74-2 and R75-5 had been insufficient to meet those mandates.

In November of 1978, the Board initiated, partly in response to the Ashland decision, proceeding R78-14 to review Rule 204(c)(1)(A) and proceeding R78-16 to review Rule 203(g)(1). (Cf Chamber, supra, No. 51671, Agenda 45, Appeal dismissed, November 12, 1979.) These two proceedings were consolidated with the three following related proposals for purposes of hearing and decision.

1. R77-15, wherein Sherex proposed a higher sulfur dioxide emission limitation for sources located in the Peoria major metropolitan area and having actual heat inputs not greater than 250 million Btu's/hr. under certain conditions;
2. R78-15, wherein the City of Rochelle proposed a higher particulates emission limitation for boilers #1 and #2 at its Rochelle Municipal Steam Power Plant; and
3. R78-17, wherein the Board proposed to delete Rule 204(c)(1)(D), previously Rule 204(c)(1)(B).

These consolidated proceedings, then, included the remanded proceedings contemplated by Ashland.

On appeal by the Board of the Chamber decision, the Illinois Supreme Court held that the Board was estopped from maintaining the appeal given its nonappeal of Ashland and its commencement of "new hearings, not pursuant to [Ashland] but because of legislative amendments 'and as part of its on-going examination of its regulations'."

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[1] Parties plaintiff were the City of Rochelle, the Village of Winnetka, the Illinois State Chamber of Commerce, Abbott Laboratories, Inc., and Caterpillar Tractor Co. (Nos. 77-1176, 77-1385 and 77-1440).

Before receiving notice of the Supreme Court's decision of its appeal of Chamber, the Board had received the economic impact study of the Illinois Institute for Natural Resources (Institute) covering the consolidated Board proceedings and had noticed hearings to be held on January 29 and 30, 1980. Notice of these hearings was sent to all persons on the Board's notice lists for R71-23, R77-15, R78-14, 15, 16 and 17. Those hearings were duly held, an additional hearing was held on February 13, 1980, and the records closed on June 13, 1980 with the exception of leave given Celotex Corporation to submit certain documentation by July 14, 1980.

In the meantime, however, the Act had been amended in 1979 by the addition of Section 9.2. This section requires the Agency to propose any appropriate sulfur dioxide regulations applicable to existing fuel combustion sources in the major metropolitan areas of Chicago, St. Louis (Illinois), and Peoria to the Board by July 1, 1980. Although because of the foregoing court decisions no sulfur dioxide emission limitations are currently in effect as state law, the sulfur dioxide emission limitations as promulgated in R71-23 on April 13, 1972 have been in effect for several years as part of the State's implementation plan (SIP) pursuant to §110 of the Clean Air Act. See Commonwealth Edison Company v. PCB, Nos. 78C2675 and 79C311 (D.C.,N.D.Ill.,E.Div.,1980).

The Board finds that:

Inasmuch as the Agency is mandated to propose appropriate sulfur dioxide regulations regarding existing, stationary, fuel combustion sources located within the major metropolitan areas of Chicago, St. Louis (Illinois), and Peoria (Act, §9.2); and

Inasmuch as said regulations will be based on modeling currently being undertaken by the Agency; and

Inasmuch as said modeling studies will provide the reference point for additional concerns such as operating permit approval, PSD increment consumption, designation of attainment areas, the availability of offsetting emission reduction credits, and other complex and data-based issues as these have developed under various federal and state regulations pursuant to the 1977 amendments to the Clean Air Act via §110 of that act; and

Inasmuch as the record in the instant proceeding is outdated and will be superceded by the record to be developed in the proceedings to be initiated pursuant to §9.2 of the Act; and

Inasmuch as repromulgation of regulations in the instant proceeding envisions a revision to the SIP pursuant to §110 of the Clean Air Act, and promulgation of regulations in proceedings initiated pursuant to §9.2 of the Act would necessitate a revision to said revision; and

Inasmuch as the regulations as adopted in this proceeding have been a part of the SIP since 1973 and have been enforceable against Illinois sources on and after January 1, 1974; and

Inasmuch as there will be no environmental harm by retaining the SIP provisions until the promulgation pursuant to §9.2 of the Act of the most recent possible technologically feasible and economically reasonable regulations; and

Inasmuch as further proceedings would necessitate future hearings complying with the requirements of the Act and the Clean Air Act and would necessitate further expense by this Board, the Agency, the Institute and the dozens of citizens, industries, and other organizations who have participated in this proceeding over the years;

Therefore, the Board finds that dismissal of this proceeding is in the best interests of the State.

The proceeding R71-23 is hereby dismissed.

IT IS SO ORDERED.

Mr. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21ST day of August, 1980 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board