

ILLINOIS POLLUTION CONTROL BOARD
April 12, 1973

IN MATTER OF:)
)
AIR POLLUTION CONTROL REGULATIONS--) #R71-23
EMISSION STANDARDS)

SUPPLEMENTAL OPINION OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

On April 13, 1972, the Board adopted comprehensive Regulations establishing emission standards and limitations for stationary sources, being Part II of the Air Pollution Control Regulations.

Rule 203(g)(1)(A) established limits on the emission of particulate matter with respect to "Existing Fuel Combustion Emission Sources Using Solid Fuel Exclusively Located in the Chicago Major Metropolitan Area".

Subparagraph (C) contained provisions with respect to "Existing Controlled Fuel Combustion Emission Sources Using Solid Fuel Exclusively".

At the time of the adoption of the regulations aforesaid, a proviso was included in the Regulations, which provided as follows:

"PROVISO Nothing in this rule 203(g)(1) shall be construed to apply in any manner inconsistent with the following paragraph 8(B) of an order of the Circuit Court of Cook County dated April 13, 1972 in case No. CH1484:

'The defendants, and each of them, their agents, employees and attorneys, are hereby restrained for a period of ten days from the date hereof from (1) adopting or from (2) holding or conducting, scheduling or rescheduling public hearings pertaining to the adoption of proposed Rule 203(g)(1)(A) of the Illinois Pollution Control Board and so much of proposed Rule 203(g)(1)(C) of the Illinois Pollution Control Board as pertains to proposed Rule 203(g)(1)(A), insofar as such rules pertain to the use of coal as a source of fuel in residential and commercial buildings in the Chicago Major Metropolitan Area, or from (1) adopting or from (2) holding or conducting public hearings to adopt a rule which would eliminate or ban the use of coal as a source of fuel in residential and commercial buildings in the Chicago Major Metropolitan Area as such area is defined by the Illinois Pollution Control Board,

unless there is a provision in said proposed rule for just compensation to owners of businesses in the class represented by plaintiffs and to owners of commercial and residential buildings whose property rights would be affected by said rule wherever said rule is effective.'

And such further orders as may be entered by the Court."

On April 27, 1972, a preliminary injunction was entered restraining the Pollution Control Board from adopting and enforcing the foregoing provisions. Pursuant to order of the Appellate Court in case entitled Roth-Adam Fuel Co., et al v. Pollution Control Board, et al, #57536, the injunction was dissolved by Order of the Circuit Court of Cook County, Illinois, entered on March 28, 1973.

We have been advised on April 5, 1973, by the Attorney General of the State of Illinois, that no further hearings are necessary to eliminate the foregoing proviso from the Regulations as adopted, and that the terms of the proviso are now mooted by the foregoing actions of the Appellate Court of Illinois, First District, and the dissolution of the injunction of the Circuit Court of Cook County on March 28, 1973.

The substantive provisions of Rule 203(g)(1) are in force and effect as adopted and without limitation otherwise provided by said proviso.

IT IS SO ORDERED.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on the 12th day of April, 1973, by a vote of 4 to 0.

Christan D. Moffett