

ILLINOIS POLLUTION CONTROL BOARD
June 10, 1981

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 78-293
)
RALSTON-PURINA COMPANY, a Missouri)
corporation,)
)
Respondent.)


ORDER OF THE BOARD (by D. Satchell):

On May 14, 1981 Ralston-Purina Company filed objections to the Hearing Officer's ruling sustaining the Illinois Environmental Protection Agency's (Agency) objections to Ralston-Purina's discovery request in this enforcement action. Objections to interrogatories 7 and 8 were sustained. These requested information concerning evidence in the Agency's possession that emission reduction is practical. The Hearing Officer sustained the objection because the burden to come forward with proposed solutions does not fall upon the Agency unless and until the Respondent establishes and proves a "state of the art" defense (IEPA v. Wells Manufacturing Co., 73 Ill. 2d 226). However, Procedural Rule 313(a) provides that it is not a ground for objection to discovery that the information will be inadmissible if it appears reasonably calculated to lead to the discovery of admissible evidence. Information in the Agency's possession concerning methods of achieving emission reductions could lead to the discovery of admissible evidence relevant either to the state of the art defense or to the Agency's burden if such defense is established. The motion is granted; the Hearing Officer is overruled.

IT IS SO ORDERED.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of June, 1981 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board