

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1987

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R86-36
35 ILL. ADM. CODE 215.204,)
HEAVY DUTY OFF-HIGHWAY VEHICLES)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon the January 12, 1987, motion of the Illinois Environmental Protection Agency ("Agency") to sever the amendment originally proposed by General Motors Corporation, Electro-Motive Division ("EMD") in the R86-51 proceeding from the regulatory proposal filed by the Agency in this docket. The Board consolidated the EMD proposal with the Agency's proposal in this proceeding by Order of December 18, 1986, in the matter of R86-51.

EMD filed a response to the Agency's motion on January 20, 1987. EMD encourages the Board to affirm its December 18, 1986, Order and alleges that severance would "create unnecessary duplication of testimony and constitute a waste of the Board's resources".

The Agency contends that severance is necessary in this instance in order to not unduly jeopardize United States Environmental Protection Agency ("USEPA") approval of the rules promulgated by the Board as a result of the Agency proposal, if in fact the Board acts in that manner. As explained by the Agency in its motion:

After promulgation, the Agency submits the rules as a revision of the Illinois State Implementation Program (SIP). USEPA can approve or disapprove of the SIP revision in whole or in part. USEPA cannot, however disapprove of part of SIP revision if that partial disapproval would make the rule more stringent than the State intended. Bethlehem Steel Corp. v. Gorsuch 742 F.2d 1028 (7th Cir. 1984). If a partial disapproval is deemed appropriate, but such disapproval would render the rule more stringent than intended by the State, USEPA must disapprove the rule in its entirety.

In this case, except for the EMD amendment, the proposed rule follows the CTG on the subject and will likely be approved as a SIP revision. The EMD amendment, on the other hand, constitutes a relaxation of the standards contained in the CTG.... It is unlikely that USEPA will agree to a rule which deviates considerably from the CTG on

the side of relaxation. If USEPA, in fact, does not approve of the EMD amendment, it cannot approve the remainder of the rule and disapprove the amendment. Such partial approval would have the effect of making the plants that would be subject to the more relaxed standard in the amendment subject to the general rule, thereby making the rule more stringent than intended by the State. That result is specifically prohibited by Bethlehem Steel and would thus force USEPA to disapprove the rule in its entirety.

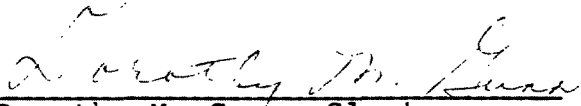
The Board originally consolidated the EMD and Agency proposals in order to allow for the convenient, expeditious, and complete determination of all claims. The Board remains convinced that these desirable goals can best be met through consolidation of the two proposals, because consolidation allows the proposals to be considered together at hearing. Therefore, the Board will not at this time sever the EMD proposal from this docket.

After all hearings in this matter have been completed, the Board will consider severing the EMD proposal so that the Board's decision regarding it might issue separately from that concerning the Agency proposal. The Agency may renew its motion at that time.

The Agency's January 12, 1987, motion to sever is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 22nd day of January, 1987, by a vote of 6-5.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board