

SUPREME COURT OF OHIO

Sandusky Dock Corp. v. Jones

106 Ohio St. 3d 274 (Ohio 2005) · Decided October 5, 2005

SUMMARY

The Ohio Supreme Court held that the Director of Environmental Protection's modification of Sandusky Dock's permit to require emission-control measures was governed by Ohio Revised Code 3704.03(R). That provision required consideration of the technical feasibility and economic reasonableness of compliance, and the director's failure to formally consider those factors rendered the modification unauthorized. The court affirmed the court of appeals' judgment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Resnick, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	October 5, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Discretionary appeal from the court of appeals' reversal of an Environmental Review Appeals Commission decision upholding the Director of Environmental Protection's modification of Sandusky Dock's permit to operate.
STANDARD OF REVIEW	The court gave due deference to the Director's reasonable interpretation of the statutory scheme while construing uncertainty in favor of the regulated entity.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Ohio
PARTIES	Director of Environmental Protection v. Sandusky Dock Corporation

TOPICS

- environmental law
- administrative law
- judicial review of agency action
- statutory interpretation

PRACTICE AREAS

- environmental law
- administrative law
- air pollution regulation
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the Director of Environmental Protection could modify Sandusky Dock's permit to operate under R.C. 3704.03(G) without complying with the technical-feasibility and economic-reasonableness requirements of R.C. 3704.03(R).
2. Whether the Director's permit modification, which required abatement of or imposed restrictions on emissions, was governed by the more specific authority in R.C. 3704.03(R).

HOLDINGS

1. When a permit-to-operate modification requires abatement of or prohibits emissions, R.C. 3704.03(R) governs the Director's authority, and the Director must give consideration to and base the determination on evidence concerning the technical feasibility and economic reasonableness of compliance.

KEY QUOTATIONS

“The unavoidable conclusion is that when a modification of a PTO authorized generally by R.C. 3704.03(G) implicates a more specific provision of R.C. Chapter 3704, the director’s general authority must give way.”
(106 Ohio St. 3d at 277)

“The legislative scheme does not evince an intent to more stringently regulate facilities with PTOs than facilities without PTOs.” (106 Ohio St. 3d at 278)

FACTUAL BACKGROUND

Sandusky Dock operated a coal-loading facility on Lake Erie under a permit to operate issued by the Ohio Environmental Protection Agency. Despite voluntary water-spray controls, wind and large coal stockpiles generated fugitive coal dust that settled on and damaged boats at a nearby marina. Following a complaint and investigation, the Director found probable cause that the emissions constituted a public nuisance and modified Sandusky Dock's permit to require compliance with visible-emission limits.

PROCEDURAL HISTORY

After investigating complaints about fugitive coal dust, the Director modified Sandusky Dock's permit to operate to require emission-control measures. The Environmental Review Appeals Commission upheld the modification and found that the dust constituted a public nuisance. The court of appeals reversed, concluding that the Director was required to proceed under R.C. 3704.03(R) and consider technical feasibility and economic reasonableness before imposing the emissions restrictions. The Supreme Court of Ohio accepted the discretionary appeal and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Director must formally comply with R.C. 3704.03(R) by considering and basing the permit-modification determination on evidence concerning technical feasibility and economic reasonableness. The Supreme Court affirmed the court of appeals' judgment, which remanded the cause to the Environmental Review Appeals Commission.

CASES CITED

- Northwestern Ohio Bldg. & Constr. Trades Council v. Conrad, 92 Ohio St. 3d 282, 287, 750 N.E.2d 130 (2001)
- State ex rel. Celebrezze v. Natl. Lime & Stone Co., 68 Ohio St. 3d 377, 384-385, 627 N.E.2d 538 (1994)

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