

ILLINOIS POLLUTION CONTROL BOARD

MINUTES OF REGULAR INFORMAL MEETING, JANUARY 18, 1971
189 W. MADISON ST., CHICAGO

Mr. Aldrich was delayed by transportation difficulties.

On behalf of Lipsett Steel Products Co., Mr. Randell Robertson and his associates asked the Board to hold an immediate hearing on the company's petition for a variance to permit continued open burning of boxcars for salvage purposes, or in the alternative to grant the petition without hearing. Mr. Currie expressed doubt whether the Board's rules permitted a hearing without satisfying the 21-day notice requirement and inquired why the company had delayed filing its petition until three days before expiration of an earlier variance. Mr. Robertson replied that there had been some confusion as to the procedural requirements of the new statute and that he had only recently been retained as counsel. Mr. Dumelle said he was opposed to granting special relief away from the site of the contaminant source and in the absence of the public. Mr. Kissel questioned the necessity of a variance during the pendency of the petition, since prosecution for a violation depended upon the discretion of the Environmental Protection Agency. Mr. Currie said he would not be disposed to grant this important petition without hearing the facts and that the hearing contemplated by the statute and rules--one in which the public had an opportunity to appear and the EPA to present views based upon a full investigation--could not be held before February. He added that he thought any hardship that the delay caused the company was self-inflicted because of the company's own late filing. While he generally believed in the variance procedure as a method of determining rights in advance of a possible violation, the company would have to proceed at its own risk in the light of the EPA's discretion and the fact that unreasonable hardship is a defense to an enforcement proceeding. On Mr. Currie's motion the Board then denied the request for expedited consideration by a vote of 4-0.

Mr. Aldrich arrived as the Board questioned Mr. Howard Zar of the federal Water Quality Office as to the status of the Lake Michigan Conference deliberations and the federal position regarding thermal pollution of Lake Michigan. Mr. Zar said that the Conference would meet in mid- to late February to consider the committee recommendation, which in essence would require the construction of cooling facilities on large generating plants, in the absence of proof that uncontrolled discharges are harmless, after a period to be determined

by the Conference. The committee believes, Mr. Zar said, that it should be difficult to show this lack of harm and that damage to organisms passing through the condensers was thought to be clear. He said he would send the Board a copy of a criticism by Dr. Mount of the Pipes plan for studying thermal effects. In reply to Mr. Dumelle, Mr. Zar said that in order to reduce the intake of organisms significantly the intake must be located in at least 100 feet of water, or five miles offshore, and that the cost would compare with that of a cooling tower. Mr. Zar and Mr. Dumelle agreed that small organisms could not be screened out of intakes.

Mr. Zar noted that no effluent standards had been recommended by the committee, in part because the Fish and Wildlife Service believed there was no advantage to limiting discharges to 20° above ambient since to do so would draw more water and thus more organisms through the condensers and expose them to temperatures still high enough to cause injury. Mr. Aldrich inquired as to hazards to swimmers and boaters from high-speed discharge jets, and Mr. Zar said he thought the problem could be avoided by marking discharge areas with buoys.

The Fish & Wildlife Service, Mr. Zar said, believes that the committee recommendation will require cooling towers. Whether it does so, he added, depends upon what is accepted as proof of the lack of damage. In his opinion what was intended was "ecological harm," which means an interference with the balance of life in a substantial part of the lake as opposed to the death of a few organisms.

While questioning some of Dr. Pritchard's assumptions--e.g., that a heated plume will always float (Mr. Zar opined that it would sink if its temperature reached 39°), he noted that Pritchard's basic theory was not far from that of the federal government with respect to the mechanisms of plume dispersion.

Mr. Aldrich presented to the Board a proposed opinion stating that he was opposed to the banning of phosphates in detergents, saying he thought it important that the Board take a position in order to dissuade municipalities from taking what he considered an unwise step in the light of the costs and dangers of presently available substitutes and the availability of methods for removing phosphates at the sewage treatment plant. The other Board members were unwilling to take a position on the desirability of banning phosphates at this time, since the Board had insufficient evidence to have a firm opinion one way or the other on the issue. Mr. Aldrich said he would publish his opinion as a separate opinion in #R70-6, in which the Board had adopted an effluent standard for phosphates in Lake Michigan.

Mr. Aldrich presented a proposal for a technical advisory committee to be paid perhaps \$150 per day and to meet perhaps six times a year. He further proposed that the Board ask for funds

to employ consultants for short-term projects that do not qualify for full scale Institute support and that are outside the competence of the advisory committee. Mr. Currie said the question had been raised whether the Board should go beyond this proposal and ask to assume the entire Board support function now performed by the Institute, including the preparation of state-of-the-art studies as background for rule-making proceedings. He said to assume this burden would have the advantage of permitting the Board to generate its own information, reduce its reliance on other agencies, and thus enhance its independence and the assurance that it will get the needed facts. On the other hand it would impose a large administrative burden on the Board, require the employment of a contracting officer or research director, duplicate Institute functions to some degree, immerse the Board in the unpleasant business of making grants, and go counter to one of the principles behind the creation of the Institute, which has to avoid isolation of various agencies dealing with related problems and to provide a common clearinghouse of environmental information. Mr. Aldrich added that having the Institute supply information acted as a healthy check on the Board. Mr. Kissel, expressing some dissatisfaction over communications between the Board and the Institute and with the limited work product so far received from the Institute, said he was prepared to continue relying on Institute information if the latter would report to the Board monthly as to pending projects and completion dates so that the Board would know what was in the works. Mr. Currie said he would write a letter requesting such reports and that in the absence of objection he would ask the Budget Bureau to approve Mr. Aldrich's suggestion regarding technical advisors and consultants but to leave the basic Board support function in the Institute for the coming fiscal year. Mr. Dumelle and Mr. Aldrich agreed to set up the technical advisory committee on an unpaid interim basis for the remainder of the fiscal year, and other members agreed to submit recommended names within the next week.

The Board then held preliminary discussions of #70-4, EPA v. Commonwealth Edison Co. (Joliet); of #70-9, EPA v. Springfield; and of a draft opinion prepared by Mr. Lawton in #70-10, EPA v. Truax-Traer Coal Co. In the latter case the Board agreed that the proposed consent order be forwarded to the parties for their approval before final Board action, and in the Springfield case the Board considered a motion by EPA to reopen the proceeding. Mr. Kissel said he thought it would set a bad precedent to delay the proceeding further, and Mr. Currie said the EPA could always file a new complaint if it believed further proceedings necessary. The issue was not resolved.

Mr. Kissel reported that the parties would appear before the Board February 3 to discuss a proposed settlement in #70-16, EPA v. Allied Mills, in answer to his letter stating that the proposal did not meet the requirements of the procedural rules. Mr. Currie

said he hoped the Board would assure that the proceeding remained open for the entry of a cease-and-desist order if that might prove necessary to prevent a recurrence of the problem that gave rise to the complaint, rather than relying entirely on a variance proceeding.

Mr. Kissel reported that eight days of hearings had been completed in #70-21, Commonwealth Edison's request for a nuclear facilities permit at Dresden, and that one further hearing was scheduled on the company's request to commence operations before completion of a cooling pond that would enable the plant to meet applicable water quality standards. He added that the issue of federal preemption with regard to radioactive discharges had been raised at the end of the previous hearings and would be briefed by the parties.

Mr. Lawton reported that a prehearing conference would be held in #70-34, EPA v. Granite City Steel Co., February 1 in order to dispose of discovery issues and a petition by the Clean Air Coordinating Committee to intervene. He said the parties were briefing the issues raised by the motion to dismiss and to strike portions of the complaint, in advance of the hearing. Mr. Currie urged that pretrial motions not be permitted to delay the hearing and that they be decided at the close of the hearing if that was necessary to avoid delay. He also suggested that if the company wished not to apply for a variance that was its privilege, but that in the absence of a withdrawal of the request for modification of the existing air contaminant emission reduction program it must be construed as a variance request and consolidated with the enforcement proceeding.

Mr. Aldrich departed to meet his train.

Mr. Dumelle agreed to work with Mr. Aldrich to draft a proposed meeting schedule for the coming fiscal year. The Board agreed that official files could be removed by a hearing officer during the hearing but that once the hearing was closed files were not to be removed from the Board office. Persons using the files should sign them out to their own offices and keep them on the premises. The Board asked Mr. Currie to request that the Institute leave behind the entire library when it moved its offices, not just the law books as proposed in Mr. Schneiderman's memorandum. Mr. Currie agreed to discuss with the Clerk the question of Board files and other administrative matters.

I, Regina E. Ryan, certify that the Board has approved the above minutes this 3rd day of February, 1970.

Regina E. Ryan
Clerk of the Board