

ILLINOIS POLLUTION CONTROL BOARD  
March 20, 1980

ARMAK COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 79-153  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION )  
 AGENCY, )  
 )  
 Respondent. )

DISSENTING OPINION (by Board Member Goodman):

A majority of the Board today found that a "ditch" was a natural drainage way notwithstanding the fact that it was originally constructed by a farmer to carry away the discharge of a tiled agricultural field and must be periodically maintained by redigging and removing vegetation. The result of this finding is that the discharge from the field drainage tile to the "ditch" must be treated by Armak. The irony of this situation is that since the "ditch" transports the field tile discharge and little else, it falls into a category of effluent limitations designed for streams with less than a one-to-one ratio of flow to discharge. Thus, the fact that the ditch carries only effluent results in limitations which are unduly restrictive.

The Board in the past has recognized the need for a designation of "industrial effluent ditch", first introduced in Allied Chemical Corporation v. EPA, PCB 73-382, 11 PCB 379, February 28, 1973. I prefer to call such a ditch a conduit which results in its being a sewer according to the definition of sewer contained in Rule 104 of Chapter 3: Water Pollution Control Rules and Regulations. "Sewer" is defined as a pipe or conduit for carrying either waste water or land runoff or both. It seems to me that an artificial conduit or ditch constructed and maintained for the purpose of carrying away waste from a tiled agricultural field along with the possible addition of a small amount of land runoff fits this definition precisely. If it is indeed a sewer under the definition of Rule 104, then it is not a water of the State and the entire premise of the majority of the Board in this case fails.

The Board states in its Opinion that "Armak has offered no evidence as to whether aquatic life exists in the ditch. The burden of proof is on Armak under Procedural Rule 502(b) (8). The Board therefore presumes that aquatic life worthy of protection naturally exists in the ditch." As I read the

evidence presented in this case, the only thing running in this conduit is the effluent from the field and some occasional runoff when it rains. I fail to see what other evidence Armak must present in order for the Board to determine that aquatic life could not reasonable exist in the ditch. I do not agree that the Board can presume that aquatic life worthy of protection naturally exists in this conduit. I would have found that the ditch in question was indeed a conduit as defined in Rule 104 of Chapter 3 and that Armak was therefore responsible for effluent limitations assigned to the discharge of this conduit to Aux Sable Creek.

I must therefore respectfully dissent.

  
Irvin G. Goodman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 13<sup>th</sup> day of May, 1980.

  
Christan L. Moffett,  
Clerk of the Board