ILLINOIS POLLUTION CONTROL BOARD

February 22, 1971

TEXACO, INC.	)	
	)	
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	PCB70-29
	)	
	)	

CONCURRING OPINION OF THE BOARD (by Mr. Aldrich)

I supported the Opinion of Mr. Currie but moved the deletion of this sentence, page 2, paragraph 2:

> "No one has the right to destroy his neighbors simply because he makes piles of money doing it."

The Motion failed for lack of a second.

I feel that it is unfair to a respondent to introduce into the Opinion a highly dramatic statement which goes far beyond the seriousness of the pollution proven, or in fact even alleged, in the instant case.

I support a statement along this line:

> "No one has a right to impose unreasonable nuisance or hardship on his neighbor simply because it is more profitable to him."

This is quite different language than "destroy his neighbors because he makes piles of money in doing it."

Samuel R. Aldrich
Board Member
Pollution Control Board

I, Regina E. Ryan, do hereby certify that Samuel Aldrich submitted the above concurring opinion this 22nd day of February, 1971

HYDROGEN SULFIDE AMBIENT AIR QUALITY STANDARDS

Country or State	Basic Standard		
	$\mu g/m^3$	ppm	Avg. Time
California	150	.10	1 hr.
Missouri	45	.03	30 min.
Montana	45	.03	30 min.
New York	150	.10	1 hr.
Pennsylvania	7.5	.005	24 hr.
Texas	120	.08	30 min.
Czechoslovakia	8	.005	24 hr.
Ontario, Canada	45	.03	30 min.

The question of official notice has come up in this case as the result of an incomplete record. Benchmarks by which the potential harm of the estimated emissions can be assessed are necessary. Surely the Board can rely on its own knowledge and experience as well as materials whose factual integrity is beyond question such as the enactment of ambient air quality standards by governmental authorities to illuminate some dark corners of this record.

Generally available, relevant, indisputably correct factual information cannot be ignored by this Board if it is to come to an informed decision after a fair hearing. Administrative bodies must be free to call upon their own peculiar experience and knowledge in arriving at a decision. If a decision could be made in an absolute vacuum, that is, purely from looking at the record, there would be no need for a five member Board. Logic would militate that decisions be made by a three member board or even a single member board. This Board is statutorily presumed to embody a certain expertise inasmuch as the legislature in its wisdom directed the governor to appoint "an independent Board... consisting of five technically qualified members." [S. H. A. ch. 111-1/2 § 1005 (a)] The only rational conclusion to be drawn from the statutory existence of the five member Board is that the legislature meant the Board to do some thinking of its own. The Board must be free to take notice of generally recognized technical or scientific facts within the Board's specialized knowledge and experience. It would, of course, be desirable to put all parties on record notice of the full extent of the materials officially noticed, but when this is not done it should not necessarily be a roadblock to the Board's consideration of particularly relevant public facts. Certainly if the parties are not prejudiced by consideration of extra-record scientific facts there should be no impediment to their use. See City of Ishpeming v. Michigan Public Service Comm. 121 N. W. 2d 462 (Mich., 1963); NLRB v. Johnson 310 F. 2d 550 (CA6, 1962).

In Monon R. Co. v. Public Service Comm. 161 N. E. 2d 626 (Ind. App. 1959) the public service commission, on its own motion, caused special investigations of railroad crossings to be made and may have based its order to require the railroad to install blinker lights at crossings on such information and evidence outside of the record. The court there based its decision on the admonition in U. S. et al v. Pierce Auto Freight Lines, Inc. where the court said:

> [T]he mere fact that the determining body has looked beyond the record proper does not invalidate its action unless substantial prejudice is shown to result.
> 66 S. Ct. 687, 695 (1946).