ILLINOIS POLLUTION CONTROL BOARD
June 9, 1971

ENVIRONMENTAL PROTECTION AGENCY )
)
) #71-31
v. )
)
SOUTHERN ILLINOIS ASPHALT CO., INC. )

LARRY P. EATON, SPECIAL ASSISTANT TO ATTORNEY GENERAL,
FOR ENVIRONMENTAL PROTECTION AGENCY

CRAIG & CRAIG, MOUNT VERNON, ILLINOIS,
FOR SOUTHERN ILLINOIS ASPHALT CO., INC.

SEPARATE CONCURRING OPINION (BY MR. LAWTON):

While I have drafted and voted in favor of the Order and Opinion of the Board in this proceeding, I do not feel that the Opinion, as adopted, goes far enough in guiding the Agency as to its action at such time as a permit may be sought by Respondent at its present location.

The testimony manifests that the operation of the plant severely affected the comfort and well-being of the adjacent neighbors, with an adverse effect on their health, limiting the use of their property, and constituted a source of noise, dirt and annoyance during the entire period of operation. The plant, when operated, constituted a severe nuisance and caused air pollution in violation of the statute, even though its emissions were, so far as the evidence shows, not in excess of those prescribed by the particulate regulations. We have held before that compliance with the regulations, which are designed for general application, does not justify the causing of a nuisance. See Environmental Protection Agency v. Granite City Steel Co., #70-34. See Section 49(c) of the statute which pointedly makes compliance with the regulations only a prima facie defense to an enforcement action based on other grounds. The statute further specifically requires the Board to consider the degree of injury caused by the emissions and the "suitability of the pollution source to the area in which it is located." Section 33(c). These provisions make it clear that a source that complies with the particulate regulations may yet be wholly unacceptable in the wrong place; and the evidence makes clear that this operation is where it does not belong. Indeed, even the company's reasons for locating where it did are most unconvincing: It does not use the much-touted railroad,(R.212) and it could easily and inexpensively have arranged for city water to be piped a considerable distance beyond the nearest homes.(R.213). Thus, it is evident that the company must be ordered not to operate at all in its present location, since it cannot do so without causing air pollution.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the above Separate Concurring Opinion was executed by Samuel T. Lawton, Jr. on the 9th day of June, 1971.

Regina E. Ryan