

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1991

INDIAN REFINING,)
)
 Petitioner,)
) PCB 91-159
 v.) (Provisional Variance)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by J.D. Dumelle):

There are two main reasons for dissenting in this matter. First is the failure by Indian Refining or IEPA to give enough facts as to possible environmental effects of this 40% increase in sulfur dioxide emitted. Will the 3,360 lbs/hr. of sulfur dioxide here allowed by the majority cause a violation of National Ambient Air Quality Standards under downwash or fumigation conditions? The record is silent and the Board has not been informed. Residences are said to be located only 1,000 feet north of the center of the refinery's process area according to the petitioner. If the emitting stacks are at the north edge of the process area the residences could be quite close to the sulfur dioxide source. How tall are the emitting stacks? That fact is also not given. Had these two fact deficiencies (actual distance to residences and stack heights) been given an estimate of maximum sulfur dioxide concentration could have been made.

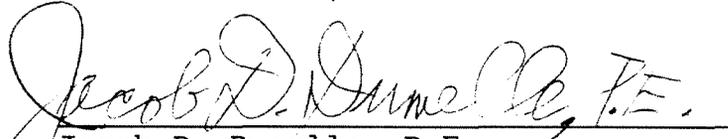
The second reason for dissenting lies in the possible violation of the Clean Air Act Amendments "anti-backsliding" provisions. This refinery and the Board process weight rule long ago accepted by USEPA evidently holds the refinery to 2,400 lbs/hr. of sulfur dioxide emissions. How then can this Board countenance backsliding by 40% to 3,360 lbs/hr? On July 26, 1991 this Board adopted R91-7 and R91-8 (RACT Deficiencies). The prohibition against backsliding (in this example from a promulgated Federal Implementation Plan) was much in mind in the discussion and vote on R91-7 and R91-8.

A related legal concern is the lack of opportunity for the public to request a hearing and to comment. An air variance, which this is, when processed in the usual mode (i.e. not as a provisional variance) has a public hearing always scheduled for it and 30 days legal notice published. How can an air variance granted through the provisional variance route without a public hearing or opportunity for one comport to Federal requirements?

Finally, the contrast in content of this proceeding with some six provisional variances (approved unanimously by the Board on September 12, 1991) is of interest. In PCB 91-164, 165, 167, 168,

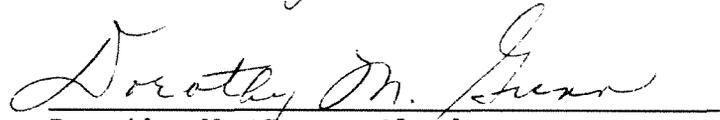
169 and 170 the IEPA recommendation states that grant of the variance is consistent with RCRA (PCB 91-164, 165) or that no Federal laws preclude its being granted (PCB 91-167, 168, 169, 170). No such statement by IEPA as to the applicability or non-applicability of Federal law to the instant matter exists in the IEPA Recommendation in PCB 91-159.

Because of the lack of environmental effects information and because of possible violation of Federal law, I dissent.



Jacob D. Dumelle, P.E.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 16th day of September, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board