## ILLINOIS POLLUTION CONTROL BOARD November 29, 1990

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PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

PCB 90-160

v.

JOHN BOOS & COMPANY, a Illinois Corporation,

Respondent.

DISSENTING OPINION (by J.D. Dumelle):

I dissent from the Board's action today for many of the same reasons articulated in <u>People v. We Toast</u>, PCB 90-84, October 25, 1990.

The Board is under an affirmative duty to be an active participant rather than an administrative rubberstamp when it ratifies stipulated settlements. In <u>Chemetco v. Pollution</u> <u>Control Board</u> 140 Ill. App. 3d 283 (5th Dist. 1986), the court held that "it is undeniable that settlements are of the Board's own making." Id. at 287. Yet in this case, how can anyone ascertain what statutory factors were considered in assessing this penalty? Instead, the record is supplied with all of the possible factors without any comment as to their applicability. Because I am unable to determine the reasons which lead to this stipulated settlement, the mandate of <u>Chemetco</u> as well as the Board's procedural rules cannot be followed.

While there exists a lack of information regarding which statutory factors were considered, the only information which is provided in this case leads me to believe the agreed fine is inadequate. In this case, the State alleged not only violations of the permit process, but excess emissions as well for a period of five years. The stipulated penalty is \$10,000 without any admission of violation. I am unable to see how such a settlement contributes to enforcement of the Act.

There is little doubt in my mind that such meager penalties for violations which extend over such a long time sends a message to industry that the regulatory permit system is a paper tiger. If there is no great incentive to comply, then why do so? In the meantime, it is those who do comply who bear the burden of the scofflaws. The regulatory permitting system exists in order to ascertain pollution sources and amounts which then helps to set limits. When companies are caught in violation and the stipulated fines they agree to are minuscule relative to their entire budget, there is no great risk associated with non-compliance. That being the case, regulatory enforcement loses any leverage which it claims to possess.

For these reasons, I dissent.

Jacob D. Dumelle, P.E. LCDR-CEC-USNR (Ret) Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the \_\_\_\_\_\_ day of \_\_\_\_\_\_, 1990.

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board