

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-56
) (Enforcement)
TRILLA STEEL DRUM CORPORATION,)
)
Respondent.)

CONCURRING OPINION (by J. Anderson):

The interim Order on this remanded case directs the parties to address six listed items related to the penalty issue. My concern relates to the information required in question #2 of the Board's Order, which I do not believe should have been included. Question #2 reads:

To the extent that it is possible to determine, what is the range of penalties which have been assessed in this and other jurisdictions for similar violations?

I have already expressed my general concerns about the potential problems when the Board itself pre-requires such comparative information. See my Concurring Opinion in Illinois Environmental Protection Agency v. Allen Barry, PCB 88-71, dated May 10, 1990. Additionally, I don't quite know what question #2 above intends; it appears to expect some quantum of information to be provided, and yet it is vague as to what that quantum is. For example, what does "possible to determine" mean; is some "showing" expected here? Does "other jurisdictions" include a search of penalty ranges in all states? Only of those which have been appealed? Does "range of penalties" include those for "similar" cases in other media?

Question #4 asks the parties, "in light of any other relevant factors" (beyond those in Section 33(c) of the Act), to give dollar penalty amounts favored by the facts of this case. I believe question #4 appropriately encompasses the "other relevant factors" area.

It is for these reasons that I respectfully concur.

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Joan G. Anderson
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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 30th day of May, 1990.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board