ILLINOIS POLIUTION CONTROL BOARD January 24, 1985

ANDERSON CLAYTON FOODS, INC.,) Petitioner,) v.) PCB 84-147 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,) Respondent.)

CONCURRING OPINION (by J. Anderson):

While this grant of variance for only three years is not an unacceptable option, I believe a grant of variance for five years, with the Board retaining jurisdiction, and with an added condition, is much more suitable in this case.

The added condition would have read as follows:

ACF must file with the Board, within three years from the grant of variance, either a plan to ultimately comply with 35 Ill. Adm. Code 216.121, or a petition for site-specific relief from 35 Ill. Adm. Code 216.121, unless a generic regulatory proceeding for CO that would apply to ACF's Wormser FBC system is docketed before the Board.

I believe ACF convincingly argued that it needs as long a variance term as possible to facilitate long-term planning. The added condition balances this consideration with the requirements imposed by the Environmental Protection Act (Act). Implicit in the concept of variance is the requirement of compliance. 35 Ill. Adm. Code 104.121(i). However, a plan for compliance, whether it entails a concrete schedule for compliance or the docketing of some form of regulatory change, would not be required until nearly three years after such a five year variance had elapsed. Because the Board would retain jurisdiction in this matter, the parties would have been free to submit motions for modification, including extending the three year deadline, throughout the full five years.

By granting only a three year "experimental" variance, the Board is requiring the parties to initiate a piecemeal variance petition process before the three years have elapsed, and still address the same compliance options as enunciated in the added condition. On the other hand, had the five year conditional variance been granted, the Board, ACF, and the Agency would have had a longer, far simpler, and more flexible process for dealing with this developing technology.

For these reasons, I concur.

H. anderson 100.nd

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 25th day of Januar, 1985

Dorothy M. Gunn, Clerk

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