

ILLINOIS POLLUTION CONTROL BOARD
August 18, 1983

CPC INTERNATIONAL, INC.)
)
 Petitioner,)
)
 v.) PCB 83-11
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondent.)

CONCURRING OPINION (by J. D. Dumelle):

While I agree with the denial decision I do not agree with some of the reasoning set forth on p. 3 of the majority opinion. The sentence, "However, CPC did not demonstrate that it is now out of compliance" is a new holding for this Board.

Where in the Environmental Protection Act does it state that a source must be "out of compliance" in order to obtain a variance? Suppose a firm is emitting particulate from an electrostatic precipitator which is at the end of its useful life. The firm is now in compliance but might save vast amounts of money if it were allowed by variance to install a less expensive cyclone pending a permanent site-specific rule change.

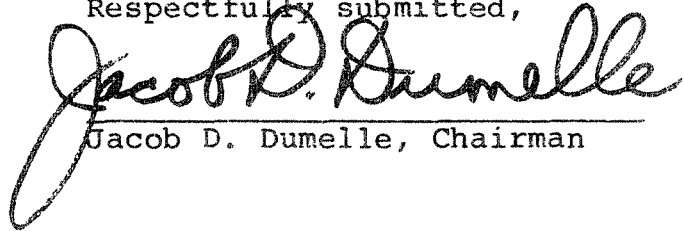
Since equipment replacement is not the issue here one might argue that the instant situation is not comparable. But the majority opinion makes no distinction. The sentence requires that a source be "out of compliance" in order to obtain a variance.

The real issue is whether or not CPC will suffer an arbitrary or unreasonable hardship through spending about \$3,000,000 per year that might be avoided. This record does not give CPC's financial condition. Thus the hardship has not been proven.

Let us not develop new precedents such as an "out of compliance" requirement for variances. That holding is not even prefaced by an "in this case only" qualification.


I would have denied the variance on the technical deficiencies mentioned in the Interim Order in PCB 82-153 of this date and for the failure to prove hardship as mentioned above.

Respectfully submitted,



Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Concurring Opinion was filed on the 23rd day of August, 1983.



Christan L. Moffett, Clerk
Illinois Pollution Control Board