ILLINOIS POLLUTION CONTROL BOARD
February 2, 1978

OWENS-ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 77-288
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

DISSENTING STATEMENT (by Mr. Werner):

Owens-Illinois, Inc. owns and operates a plant in Streator, Illinois which manufactures glass containers.

The firm's manufacturing process includes the application of surface treatment to hot glass containers in nine furnaces.

In 1973, the Illinois Environmental Protection Agency issued Operating Permits for all of these furnaces.

In 1977, the company submitted applications for renewal of the Operating Permits which contained information identical to the original applications and stated that all previously submitted information remained current.

The Agency then denied the renewal applications for 7 out of the 9 furnaces on the grounds that the furnaces violated the Board's Air Pollution Regulations by emitting particulate matter into the atmosphere in excess of .55 pounds per hour.

The premise on which the Agency incorrectly based its mathematical standard rests on the assumption that the substrate (i.e., the glass containers) to which the stannic chloride is applied is not includible in the computation of the process weight.

Rule 203(b) for existing furnaces reads in pertinent part, as follows:

> "...No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any existing process emission source which, either alone or in combination with the emission of particulate matter from all other similar new or existing process emission sources at a plant or premises, exceeds the allowable emission rates specified in Table 2.2 and in Figure 2.2 ..."

The "process weight rate" is defined in Rule 201 as the actual weight or engineering approximation thereof of all materials except the fuels and the combustion air for same, introduced into any process per hour.

This process charge in pounds per hour must, from the above Rule and definition, include the substrate which is the glass container weight in pounds per hour, plus the weight in pounds per hour of the surface treatment.

To this writer, there can be no other interpretation of process weight rate. It must include, by definition, all materials charged, with the exception of the fuel and the air for combustion.

The Agency, on page 2 of their letters of September 20, 1977 to Owens-Illinois, has arbitrarily, without explanation, eliminated one part of the process weight (the glass containers) and used only the surface treatment material which is one-thousandth of the actual process weight in pounds per hour given for each of these furnaces by Owens-Illinois.

Apparently, the Agency accepted the Owens-Illinois data for all of the furnaces, since they divided the process weight given by 1,000.

In order to clarify the process weight rate in pounds per hour and the allowable emission rate in pounds per hour for existing process emissions, we submit tabulation #1 in the appendix to this statement. It will be noted that the particulate matter emitted in pounds per hour, also shown on this tabulation, is well below the allowable emission rate established by the definition and by Rule 203(b).

The Agency throughout their correspondence referred to Rule 203(a). Since these furnaces are existing process emission sources, the applicable rule must be 203(b).

The Agency denied permits for 7 of these furnaces and allowed permits for 2 of them. The writer's question is: Why did they do this in light of the technical data submitted herein? In a counterclaim at a later date, the Agency, without explanation, requested the Board to revoke the permits which were previously issued for these 2 furnaces.

What mental processes initially separated these 2 furnaces from the other 7 furnaces? Who made this decision? What went on in the mind of the Agency evaluater who examined this data? How did he differentiate between the various furnaces? What decision-making criteria were used? If, as the Agency contends, the "mental process" rule forbids such inquiry into the facts, we would never know what circuitous route led to such determinations. We cannot follow this line of reasoning.

In a hearing on this matter, the company asked the Hearing Officer to allow written questions which asked for the names of Agency personnel having knowledge of the relevant facts concerning the permit denials.

The Agency objected to this request and argued that no inquiry into the "mental process" of Agency personnel in reaching the permit denial decision" ought to be made. The Agency asserted that the proper scope of Board review of permit denials is limited solely to the written "administrative record." Accordingly to the Agency, this administrative records consists of "the permit application, related correspondence, the Agency's statement of reasons, and any other written material relied upon by the Agency in reaching its decision." The Agency stated that "without the protection of the mental processes rule, and without some limitation upon the type of questions to be propounded, the Agency, which considers thousands of permit applications each year, may be subjected to frequent and time consuming questioning concerning its decisional processes." But if the decisional processes are in error, should they not be probed in depth?

Moreover, the Agency itself admitted that "no Illinois cases have been found which deal with the mental processes rule." No previous Board decisions pertaining to this rule are mentioned or discussed by the Agency. In support of its legal position, the Agency relies primarily on cases decided by the Federal courts. However, this reliance appears to be misplaced, and is certainly not persuasive.

Why should the Board necessarily adopt the Federal view?

In fact, there appears to be no valid reason why Board review of permit denial appeals should be solely limited to written documents. In certain cases, it may be necessary to go beyond the written record to discover the truth. Why should the Board adopt a position which may serve as a strait-jacket on future Board freedom of action to decide individual cases on their merits in a just, fair and equitable manner?

Nels E. Werner
Member of the Board

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above DISSENTING STATEMENT was submitted on the 9th day of February, 1978.

Christan L. Moffett, Clerk
Illinois Pollution Control Board

TABULATION NO. 1

	Furnace Designation	Process Weight, Rate #/hr.	Allowable Emission Rate #/hr.	Particulate Matter Emitted #/hr.
1.	A	16,230	16.67	2
2.	B*	14,010	15.11	2
3.	C	16,230	16.67	4
4.	D	14,750	15.64	4
5.	E	15,490	16.16	4
	F	withdrawn by Owens-Illinois, Inc.		
6.	G	21,340	20.03	8
7.	H	21,340	20.03	4
8.	I	23,560	21.40	8
9.	J*	22,980	21.05	2

*B&J Furnaces were approved by the Agency at the time that the Agency denied permits for A,C, D, E, G, H, and I Furnaces.