ILLINOIS POLLUTION CONTROL BOARD March 17, 1977

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| PROCEDURAL | RULES | REVISIONS |) | | |

DISSENTING OPINION (by Mr. Zeitlin):

While I have concurred with the Board with respect to all other Parts of the Procedural Rules, I find that I must dissent from the Board's Order of March 3, 1977 and Opinion of March 17, 1977, adopting a new Part VI: Hearings Pursuant to Rule 203(i)(5) of the Water Pollution Control Regulations. I feel there are deficiencies in these Rules serious enough to cast doubt on the validity of the entire scheme established by Rule 203(i)(5).

First, the new Procedures in Part VI fail to define the nature of the proceeding. While it may be the Board's intent that these hearings be adjudicative (Rule 605(a)), this should be clarified. Such clarification would apprise petitioners of the standards to be applied in reaching decisions pursuant to new Rule 607.

Second, no criteria or standards are stated for the Board's decision as to whether a source causes "significant ecological damage." Inasmuch as neither "significant" nor "damage" are defined, the Board will be making adjudicative decisions on the central issue under Rule 203(i)(5) without providing any guidance to the petitioner making a demonstration, or to any other interested parties.

Third, the Board's decision as to "any corrective measures" which it finds "appropriate" will clearly constitute a denial of basic due process (to the petitioner) and a violation of basic administrative law (by the Board). It is a general tenet of administrative adjudication that there must be specific criteria and standards to guide such decisions.

Fourth, if the hearing required by the Board is in the nature of an adjudicatory hearing, it seems that the Board may be limited in reaching its decisions by an absence of opposition to a petitioner's claim that no ecological damage has occurred. The Board has heretofore avoided any adversary role in adjudications before it.

Finally, it seems likely that these cases may take an unduly long time to even get started. Pursuant to new Rule 604, we must apparently wait 60 or 74 days before a hearing is set, or before a petitioner even knows whether its petition will be opposed by the Environmental Protection Agency.

Rule 203(i)(5) of Chapter 3 seems to have been designed to allow the Board to assure itself that the thermal standards of Rule 203 are adequate. If used for that limited informational purpose, the Rule would be suitable, and perhaps provide a basis for additional proceedings to correct any damage found. But to require petitioners to present information about compliance with undefined standards, which information may then be used, in the absence of due process, as a basis for mandatory Orders of the Board seems terribly unfair.

I must respectfully dissent.

PHILIP Z Member of the Board

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 22 Ma day of March , 1977.

Illinois Pollution Control Board