

ILLINOIS POLLUTION CONTROL BOARD
November 10, 1976

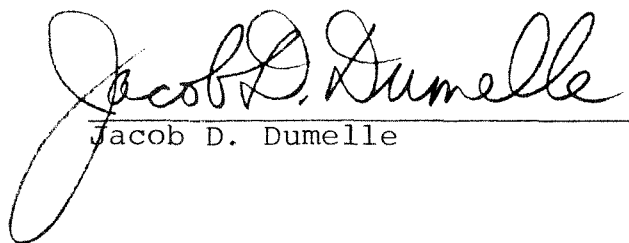
INCINERATOR, INC.,)
)
 Petitioner,)
)
 v.) PCB 76-237
)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by Mr. Dumelle):

Because of the import of Train v. NRDC, 421 U.S. 60 (1975) and Section 116 of the Clean Air Act it is my feeling that this variance cannot be granted. (See International Harvester v. Environmental Protection Agency, Dissenting Opinion, PCB 75-271, September 1976).

In Harvester the Board majority specifically stated that the variance "does not purport to grant variance from federal legislation or regulation" (p.4). No such statement appears in the majority opinion in this cause. In its absence, one must conclude that the instant variance is meant to be one from the Federally-approved State implementation plan. Thus the rationale advanced by the Board in Harvester evidently is not meant to apply here.

Even were the disclaimer of intent to amend the State implementation plan placed in the majority opinion, my own feeling is that air variances, where air quality has not been attained, cannot be granted.



Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 12th day of November, 1976.



Christan L. Moffett, Clerk
Illinois Pollution Control Board