

ILLINOIS POLLUTION CONTROL BOARD

May 23, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
vs.) PCB 73-109
)
ARNOLD N. MAY; HILLVIEW FARMS)
FERTILIZERS, INC., a domestic)
corporation; and ARNOLD N. MAY)
BUILDERS, INC., a domestic)
corporation,)
Respondent.)

DISSENTING OPINION (by Mr. Dumelle):

While I agree with the findings that violations were proven, I emphatically disagree with the miniscule penalty levied by the majority. The \$2,500 penalty is far too low and \$25,000 in my mind would have been far more appropriate.

We have here the situation of a knowledgeable, experienced aggressive businessman, Mr. Arnold N. May, irresponsibly continuing this enterprise while severely interfering with many others and their own rights to a clean and pleasant environment as guaranteed by both the Illinois Constitution and the Environmental Protection Act.

The record in this proceeding is replete with references to the odor nuisance and its consequences (see pages 77, 79, 83, 102, 125, 159, 161, 169, 213, 321, 397, 402, 408, 469, 476, 504, 545, 552, 555, 564, 571, 644, 749, 761, and 809). Let me cite just two of the many instances of citizen testimony

Mrs. McNish (an adjacent farm owner to the permit area)

Q Has this ever caused you any physical ..

A It makes you really sick. It really does.

Q Well, when you say sick, what do you mean by that?

A You get sick to your stomach from something that smells bad.

Q Has that happened?

A Oh, yes. Last year I went outside. It was so bad one day I went to do some work and I up-chucked over the bannister. (R. 79)

And an industrial physician at International Harvester, Dr. Roland Olsson, who resides in Spring Grove, testified as follows:

Q Would you describe these odors that you have mentioned?

A Well, it was foul. I would say it was comparable to an open box latrine in the Army. That is as close to it as I can come. It wasn't chemical. It wasn't that of a paint factory or a refinery. It was, as I said, comparable to an Army latrine, which I am quite familiar with. (R. 545)

The language of the majority opinion (p. 11) reduces the penalty because the "social value of such projects is very important and weighs heavily in mitigation." The very abuse of placing unsuitable and partially digested sludge on land, as was done in this proceeding, may make it difficult for other sanitary districts and cities to ever go to land disposal of their sludge.

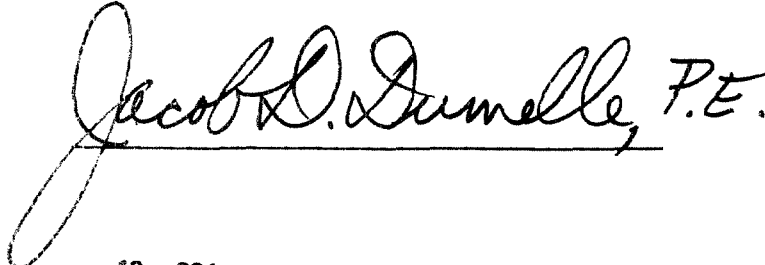
Put another way, the user of any new technology has a responsibility to act responsibly. The environment is not his laboratory to do with it what he will, regardless of consequences. The immediate world ought not to smell like an "Army open box latrine" and farm women ought not to have to "upchuck over the bannister".

Nowhere in the record does any attempt appear on the part of Mr. Arnold N. May to reject loads of sludge or to ask that they be properly digested. To me, mitigation would only be called for in this case had a good faith effort been made to cease causing a nuisance. Mr. May's sworn testimony stands on its own

Q Now, have you ever rejected a load of material from Mr. Larsen's trucking company on the basis of odors associated with the material?

A I have not. (R. 1399)

The penalty in this case should have been at least \$25,000.


A handwritten signature in cursive script that reads "Jacob D. Dumelle, P.E." The signature is written in dark ink and is positioned above a horizontal line.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board,
hereby certify that the above Dissenting Opinion was filed this

2nd day of July, 1974.

Christan L. Moffett