

ILLINOIS POLLUTION CONTROL BOARD

September 12, 1974

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 74-124
)
CITY OF ROCKFORD, et al)

SUPPLEMENTAL STATEMENT (by Mr. Dumelle)

While I have voted for this opinion I am bothered by the relationships between the City of Rockford and the private firms named herein as regards liabilities and penalties.

The City admits to each and every violation and assumes full responsibility. That means it admits, for example, to "open dumping" for the period from July 1, 1970 to April 1, 1974 (which is the date of filing the complaint). A single violation of the Act can carry a \$10,000 penalty plus \$1,000 per day it continues or \$1,380,000 for the 1,370 days of violation admitted in this instance.

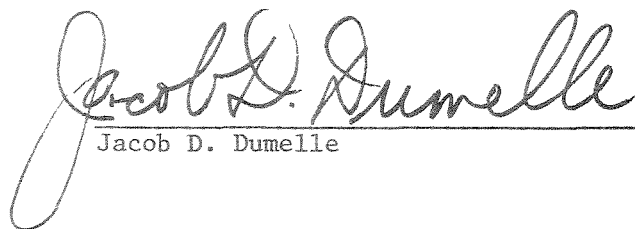
Similarly, the admitted charges for having no fence or gate; for not providing daily cover; for failure to supervise unloading of refuse; for not providing final cover; etc. could result in theoretical penalties in the multi-thousands of dollars individually and millions of dollars in the aggregate.

Under this opinion and order, Rockford will pay \$6,500 and Browning-Ferris Industries \$8,500 of the total \$15,000 stipulated penalty. The Board has long levied lower penalties on governmental units than on private parties on the grounds that taxpayers' money is better spent on abatement programs than to go to another governmental unit. But here the agreement is in effect stating that 57% of the total liability (\$8,500 of \$15,000) devolves upon Browning-Ferris Industries.

The question then becomes: Would the Board have assessed an \$8,500 penalty upon Browning-Ferris had it appeared alone and admitted to 57% of the violations of the complaint? Without additional information as to effects (odors or rodents, etc.) from these violations it is difficult to judge this question. No citizens appeared at the hearing.

What I am concerned about is the precedent of having private firms shelter themselves behind a municipality's admission of guilt possibly to avail themselves of the precedent of lower penalties for cities.

The Board will have to carefully watch future settlements to determine if such a pattern develops.



Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Pollution Control Board, hereby certify the above Supplemental Statement was submitted on this 18th day of September 1974.