

ILLINOIS POLLUTION CONTROL BOARD

January 30, 1973

ARMAK COMPANY)
)
 vs.) PCB 72-414
) 72-415
 ENVIRONMENTAL PROTECTION AGENCY) (Consolidated)

Leo Wykell and Lawrence Gunnels, Attorneys for Petitioner
Steven C. Bonaquidi, Assistant Attorney General for the EPA

CONCURRING OPINION OF MR. HENSS AND MR. DUMELLE:

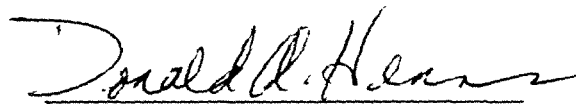
I concur in the denial of the variances requested by Petitioner but do not agree with the language used by the other two Board Members. We should recognize that a certain amount of confusion and misunderstanding accompanied the development of the new permit program. Citizens were uncertain of the requirements of the new regulation. Workshops and educational programs conducted by the EPA were of considerable assistance in educating the public, but the forms still seemed rather formidable to many people. I believe that some of the forms should be simplified, and that such revision, as well as workshop programs, will aid the public in understanding the Regulations and in complying with them. In our progress toward a cleaner environment we must take care not to impose a different burden on the public--the burden of excessive and unsympathetic bureaucracy.

Recognizing the fact that the time schedule is rather tight and that some persons might not be able to comply with it, I would avoid giving the impression that there will be a virtually unyielding adherence to the deadlines.

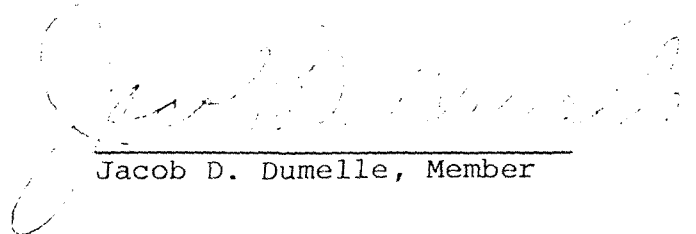
In this case Petitioner Armak simply failed to meet its burden of proof. Armak claimed that a hardship would be created if the Company were required to meet the deadline for submission of the permit application, but the Company did not at any time give us specific information regarding the data it needed to submit or the amount of work and time required to produce the data. There is no description of the Armak equipment or the type of testing which will be conducted. In November 1972 Armak entered into a contract with a firm dealing in technology research to conduct "efficiency testing" on its emission control equipment. Armak said this may "take four months". Why? What is involved in the study? How much equipment? What type? How much effort is required? There is no showing that there are two pieces of equipment or 2,000. Armak has simply failed

to submit any detail whatsoever from which we could conclude that the deadline does impose an unreasonable hardship on the Company.

The final paragraph of the Majority Opinion includes language which could be construed as an open invitation to the Agency "or anyone else" to prosecute Armak. I feel that it is wrong for the Board to make this suggestion. Armak may still make proof of its hardship in a subsequent proceeding. Our suggestion that prosecution be initiated may compromise our fairness in deciding the issue. This Board does not have the right to initiate enforcement cases and should not invite a prosecution against any person or company.


Donald A. Henss, Member

I concur in Mr. Henss' sentiments as to the need for education on the new permit program and a recognition of the problems of its start-up. And while I agree with him on the failure to meet the burden of proof I also feel that Armak did not assign sufficient manpower to the task and this was a factor in my decision.


Jacob D. Dumelle, Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above concurring opinion of Mr. Henss and Mr. Dumelle was filed by them on the 14th day of February, 1973.


Christan L. Moffett