

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1990

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GENERAL ELECTRIC COMPANY,)
a New York Corporation,)
)
Respondent.)

PCB 90-91

DISSENTING OPINION (by J.D. Dumelle):

I dissent from the Board's action today for many of the same reasons articulated in People v. We Toast, PCB 90-84, October 25, 1990.

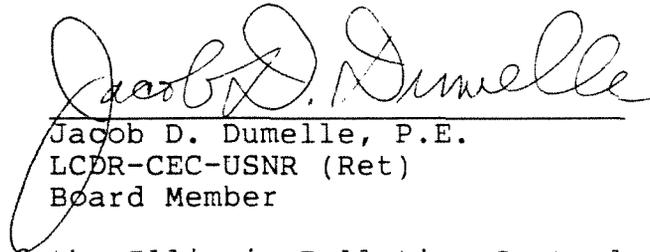
The Board is under an affirmative duty to be an active participant rather than an administrative rubberstamp when it ratifies stipulated settlements. In Chemetco v. Pollution Control Board 140 Ill. App. 3d 283 (5th Dist. 1986), the court held that "it is undeniable that settlements are of the Board's own making." Id. at 287. Yet in this case, how can anyone ascertain what statutory factors were considered in assessing this penalty? Instead, I am supplied with all of the possible factors without any comment as to their applicability. Because I am unable to understand the factors which lead to this stipulated settlement, the mandate of Chemetco as well as the Board's procedural rules cannot be followed.

While there exists a lack of information regarding which statutory factors were considered, the only information which is provided in this case leads me to believe the agreed fine is inadequate. In its DeKalb facility, General Electric operates approximately forty-five (45) air emission sources. At least "several" of these sources were unpermitted from 1972 until 1989. Even though General Electric admitted violations of the act, the stipulated penalty in this case was \$6,000. Such an amount is a mere band-aid and serves to degrade the importance of the regulatory system.

There is little doubt in my mind that such meager penalties for violations which extend over almost two full decades sends a message that the regulatory permit system is a paper tiger. If there is no great incentive to comply, then why do so? In the meantime, it is those who do comply who bear the burden of the

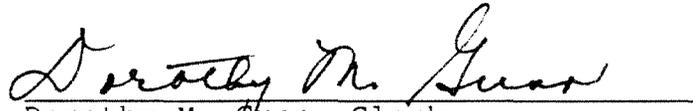
scofflaws. The regulatory permitting system exists in order to ascertain pollution sources and amounts which then helps to set limits. When companies are caught in violation and the stipulated fines they agree to are minuscule relative to their entire budget, there is no risk associated with non-compliance. That being the case, regulatory enforcement loses any leverage which it claims to possess.

For these reasons, I dissent.



Jacob D. Dumelle, P.E.
LCDR-CEC-USNR (Ret)
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 11th day of December, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board