

ILLINOIS POLLUTION CONTROL BOARD  
September 15, 1976

INTERNATIONAL HARVESTER COMPANY,     )  
  )  
  Petitioner,     )  
  )  
  v.                     )     PCB 75-271  
  )  
ENVIRONMENTAL PROTECTION AGENCY,     )  
  )  
  Respondent.     )

SPECIALLY CONCURRING OPINION (by Mr. Zeitlin):

While I agree with the result reached by the majority of the Board in this matter - that is, the grant of a Variance - I cannot concur with the reasoning expressed in the majority Opinion to support that result. In brief, I feel that the facts and circumstances of this case warrant the relief granted in this case; the majority Opinion's statements with regard to the Board's interpretation of Train v. Natural Resources Defense Council, 421 U.S. 60 (1975), are unnecessary to reach the final result, and should be regarded as mere surplusage.

The Board here specifically finds that Petitioner has complied in good faith with the conditions of previous Variances approved by the Board, and that the instant Variance is an extension of those prior Variance grants. A reading of the latter of the prior Variance grants, PCB 74-277, indicates that the Board knowingly approved Petitioner's compliance plans, with knowledge that those plans might extend beyond the attainment date for the primary ambient air quality standards. See, Supplemental Opinion and Order of the Board (September 29, 1975), 18 PCB 734. The Board also knew then that portions of Petitioner's compliance efforts might extend into 1977.


Given these facts, I feel that it is plain that our previous statements with regard to this matter have led Petitioner to follow an approved course of action in its compliance efforts. The Train decision does not affect the validity of compliance plans ordered by the Board in such previous proceedings. Our extension of a previously approved Variance under these facts is not prohibited by Train.

Further, the Board's Supplemental Opinion and Order in this matter, supra, makes it clear that the primary ambient air quality attainment date for the Chicago area is still an open issue. It may well be that the validity of the Board's previous interpretation of Train need not even be approached in this case, because of the dates involved.

These factors, combined with the normal weighing of hardship against environmental impact employed in any Variance analysis, indicate that the relief granted in this case could have been granted without an unnecessary, general decision on the Train issue.

For the same reasons, I feel that no broad discussion of this Board's Variance authority vis-a-vis federal law is necessary to this decision. This is particularly true inasmuch as that discussion may not even be apropos under the majority's Train interpretation.

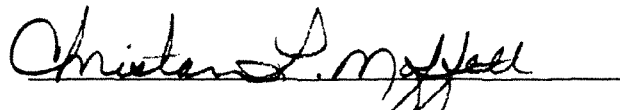
I therefore decline to join in the majority Opinion.



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Philip Zeitlin  
Member of the Board

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Specially Concurring Opinion was submitted on the 20<sup>th</sup> day of September 1976.



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Christan L. Moffett, Clerk  
Illinois Pollution Control Board