

ILLINOIS POLLUTION CONTROL BOARD
July 8, 1976

CITY OF DES PLAINES, RICHARD F.)
WARD, and ROSEMARY S. ARGUS,)
)
 Complainants,)
)
)
 v.) PCB 76-157
)
)
METROPOLITAN SANITARY DISTRICT)
OF GREATER CHICAGO and THE)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
)
 Respondents.)

DISSENTING OPINION (by Mr. Dumelle):

The majority of the Board has dismissed the Complaint as being "frivolous in that it fails to state a cause of action for which the Board can, at the present time, fashion a remedy".

I agree with the comments of the other Board Members that the Complaint is of a "shotgun" type. It has 23 counts and many are clearly not applicable or proper.

For example, Counts "g" and "i" refer to Technical Policy 20-24 which is not a regulation of the Board. Count "k" alleges that the Illinois Environmental Protection Agency has not adopted certain "standards" for sewage treatment plants. Standards and regulations are adopted by the Board, not the Agency. Count "l" is concerned with an NPDES permit. Since the NPDES permit program has not yet been approved by both Illinois and the United States government it is not yet in force and the Board has no jurisdiction over Count "l" at this time.

Other counts are vague and without the barest of factual material to substantiate them. Count "n" alleges a violation of the primary sulfur dioxide ambient air quality standard but no information is given as to the fuel sulfur content, amount of fuel burned and the stack height of the heating plant at this facility. Count "u" alleges a fugitive particle violation but

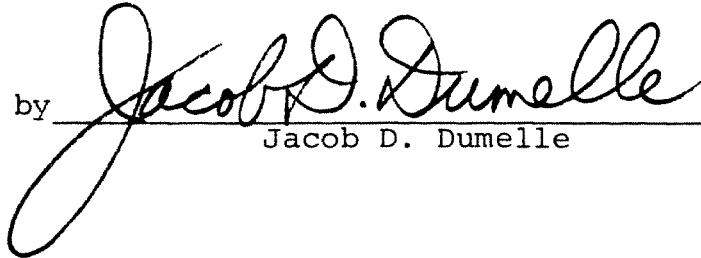
no process description is given that would cause this to occur. Counts "v" and "w" allege violations of the reactive organic materials rules but again no showing is made of a process using organic solvents.

Having said all of this, I am of the opinion that there do remain some actionable counts. The possibility of airborne bacteria or viruses does exist (see Count "a") and the Complainant should have had an opportunity to prove its case on at least this matter. I would have struck those other counts which were clearly not applicable or vague and allowed the case to go forward.

If a hazard from airborne bacteria or viruses could be proven, then this Board could certainly order the covering of the tanks emitting those aerosols. Covered sewage plants are in use at the North Shore Sanitary District (Clavey Road); at Cedar Rapids, Iowa; and at Los Angeles (Hyperion Plant). Thus the remedy is known and can be fashioned. And it is preferable that these very type of concerns be litigated and resolved in advance of construction so as to minimize retrofit expense.

Thus there is a cause of action and a remedy could be fashioned at this time. I respectfully dissent.

Submitted by



Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 15th day of July, 1976.



Christan L. Moffett, Clerk
Illinois Pollution Control Board