

ILLINOIS POLLUTION CONTROL BOARD
August 23, 1979

FEDERAL PAPER BOARD COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 79-69
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

CONCURRING OPINION (by Mr. Dumelle & Mr. Young):

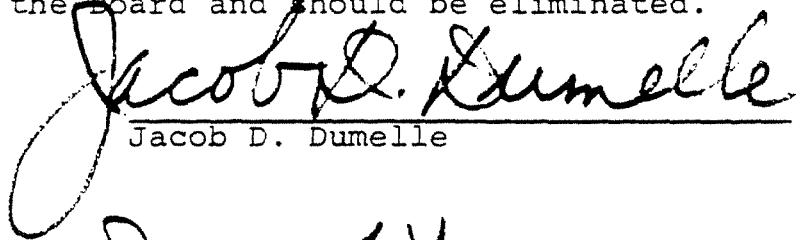
Rule 203(g)(1)(A) of Chapter 2 was adopted by the Board April 13, 1972 (4 PCB 191; 4 PCB 298). The adoption was reversed and remanded by the Appellate Court, First District, December 19, 1974 (Commonwealth Edison Company v. PCB, 25 Ill. App. 3d 271; 323 N.E.2d 84, rehearing denied).

The Illinois Supreme Court upheld the judgment of the Appellate Court in an opinion of January 20, 1976 (Commonwealth Edison v. PCB, 62 Ill.2d 494; 343 N.E.2d 459, rehearing denied). On July 7, 1977, the Board re-adopted (validated) Rule 203(g)(1)(A) (27 PCB 55; 27 PCB 57). The July 7, 1977 action of the Board was successfully challenged before the First District Appellate Court in Illinois State Chamber of Commerce, et al and The Village of Winnetka v. PCB, 67 Ill.App.3d 839; 384 N.E.2d 922 (December 14, 1978) and before the Third District in Ashland Chemical Company v. PCB, 64 Ill.App.3d 169; 381 N.E.2d 56 (September 27, 1978). In both cases, the regulation was vacated and remanded to the Board.

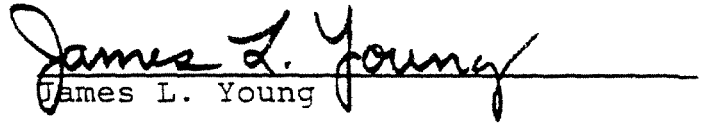
On July 12, 1979 the U.S. Environmental Protection Agency published a Notice of Deficiency; Illinois State Implementation Plan with regard to Rule 203(g)(1)(A) and others (44 FR 40723-4).

Since Rule 203(g)(1)(A) is without force or effect, any reference to the rule by the Agency in consideration of a permit application is not proper and a permit denial based upon failure to attain compliance with the emission limitation set forth in Rule 203(g)(1)(A) is in error.

Similarly, that portion of the Board's Opinion which concerns itself with the invalidated rule is extraneous to the conclusion and order of the Board and should be eliminated.

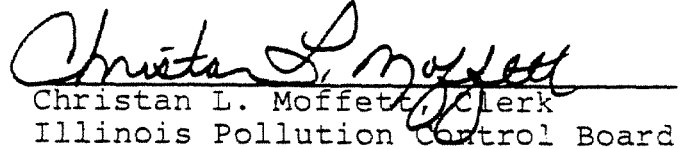


Jacob D. Dumelle



James L. Young

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Concurring Opinion was submitted to me on the 30th day of August, 1979.



Christan L. Moffett, Clerk
Illinois Pollution Control Board