## ILLINOIS POLLUTION CONTROL BOARD December 13, 1973

ENVIRONMENTAL	PROTECTION AGENCY	) ) )		
	ν.	) ) )	РСВ	73-182
O'KEEFE BROS.	COAL COMPANY	)		

DISSENTING OPINION (by Mr. Dumelle):

I concur with the majority in dismissing the alleged violation of Rule 203 (f)(1), because sufficient evidence is lacking in the present record to support a finding of violation. I agree with the majority that testimony as to coal particulate emissions emanating from the O'Keefe Bros. Coal Company property on relatively calm days would suffice to find a violation of Rule 203 (f)(1) by negating the exception provided in the event of a wind speed exceeding 25 mph found in Rule 203 (f)(3).

I concur with the majority that dates of specific violations as to alleged violation of Section 9(a) of the Environmental Protection Act are not necessary. Counsel for Respondent repeatedly objected to testimony concerning alleged emissions for failure to specify a specific date (R. 21, 82, and 92). The hearing officer erred whenever he sustained these objections as to violations of Section 9(a) of the Act as specific dates are not necessary to sustain a violation of Section 9(a). The majority agrees with this proposition and only would require specific dates as to a violation of Rule 203 (f)(1) (Page 2 of the Majority Opinion). However, I feel the Majority Opinion should have specifically stated that dates of specific violations of Section 9(a) of the Act is unnecessary.

I dissent from the 4-1 Majority in that I feel sufficient evidence was presented to find O'Keefe Bros. Coal Company in violation of Section 9(a) of the Environmental Protection Act in that it caused or threatened or allowed the emission of coal dust, either alone or in combination with other sources, in sufficient quantities and duration so as to be injurious to property and unreasonably interfere with the surrounding citizens enjoyment of life and property.

Five citizens, who live within one-half block from the O'Keefe Bros. Coal Company, testified at the hearing, but the testimony of one citizen witness was excluded from consideration by the Board because of prejudice against Respondent. The remaining four citizens all testified that they could identify the dust in and around their homes as being coal dust because they either used to burn coal as a home heating fuel (R. 19, 20) or from the coal dust's physical characteristics (R. 110, 132, 134, 167, 170 and 197). The four citizen witnesses testified that they were subjected to more coal dust when the wind was either from the south, southeast, or southwest (R. 48, 62, 63, 77, 124, 133, 135, 169, and 195). Mrs. Karpinski testified that:

"If it happens to be day when there is wind, and I say in our cases the wind would have to be from the west or southwest, depending from which direction, the coal dust is driving toward our houses. It is in the air. You can see it at that time". (R.48)

The four citizen witnesses also testified that more coal dust is present when coal handling operations are in progress at the O'Keefe Bros. Coal Company. Mrs. Karpinski testified:

"I tell you when you see most of it (coal dust)when we have a wind from the southwest and they pick up the coal with these big scoops and drop them, you get all that dust coming, depending on the wind". (R. 21).

Mrs. Canova testified:

"When they are loading their trucks up with their big shovels or big scoops...you can see the dust coming from the coal yard".(R. 81)

Mrs. Jabonski testified:

"...when the crane is...dropping your coal, there is a certain amount of dust you can see as the coal is put down".

Mrs. Jabonski further testified:

"I can do them in the morning (clean the venetian blinds or window sills) and when the coal yard is working you can find it (coal dust) in an hour after you are through dusting then, you have got a film there". (R. 131).

Both Mrs. Karpinski and Mrs. Jabonski testified that coal dust was not present before O'Keefe Bros. Coal Company located in the neighborhood (R. 50, 116, and 117).

I would find that the above citizen testimony clearly establishes that O'Keefe Bros. Coal Company was allowing the emission of coal dust in sufficient quantities to constitute air pollution as prohibited by Section 9(a) of the Environmental Protection Act. I believe the Majority erred in dismissing the allegation of violation of Section 9(a) of the Environmental Protection Act.

Jacob D. Dumelle

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I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 1971 day of December, 1973.

Illinois Pollution Control Board