ILLINOIS POLLUTION CONTROL BOARD
December 9, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
v.) # 71-239
)
JACK McINTYRE and DWIGHT ROWE,)
d/b/a JACK & DWIGHT'S NuWAY)
AUTO SALVAGE AND SALES)

DISSENTING OPINION (by Mr. Kissel):

The effect of the Board's opinion is to sound the death knell for auto salvage dealers in Illinois. I view this action with sincere regret since the auto salvage dealer represents an important link in the re-cycling processes. Under Title V of the Environmental Protection Act, this Board received a legislative mandate to "minimize environmental damage by . . . encouraging and effecting the re-cycling and re-use of waste materials." By this decision today, this Board in effect says that the small or medium size auto salvage dealer, no matter what precautions he may take to prevent fires, is not to be a part of this re-cycling effort.

In this case, the respondents, as of July 1, 1970, with the passage of the Environmental Protection Act, instructed their employees that open burning of auto hulks was to cease. No instances of fires on the premises were reported until November, 1970. When that fire occurred, Jack McIntyre, one of the co-owners, sought the advice of Marshall Monarch, Director of the Quad-Cities Regional Air Pollution Control Board; Marshall advised him to install a water tank on his premises, which he did. Unfortunately, when the next series of fires occurred in mid-December, the 500-gallon water tank had frozen. The subsequent fires in 1971 also resulted in damage being done to respondents' wrecking equipment. On several of these occasions, respondent called the local fire departments; one day-long fire in August, 1971 required over 20,000 gallons of water before it could be quenched.

Though it may be true that respondents have operated a sloppy, fire-prone salvage yard, I believe that the Board has broadly interpreted the term "open burning". I, too, am disturbed at the frequency with which fires occurred on respondents' premises, but I believe them to be just that - "fires" - not open burning. If the

citizens of this State are faced with a recurring fire menace, their proper recourse is to the State Fire Marshal and his investigatory and penalizing powers under Chapter 127-1/2 of the Illinois Revised Statutes, not to the Illinois Pollution Control Board.

Nor did the Agency present any evidence that respondents were conducting salvage operations by open burning. There was nothing in the record to substantiate that respondents were burning auto hulks to enhance their value on the market. One simple question put to the operators of the salvage yard would have sustained such an allegation, but no such question was posed. Further, there is evidence to the contrary; i.e., in one of the fires their new wrecker burned, in another car seats that were being saved to be used as diking material were consumed.

On page 4 of the Board's opinion, Mr. Lawton states: "Where 2500 cars are stored for ultimate salvage operations, where gasoline is present in all or most of them, and where fire is used for dismantling, the auto salvage operator has a heavy burden of seeing that no fires occur, or if they do occur, that they are immediately extinguished." In the instant case, respondents bore that burden. When fire occurred, the fire department was called and the respondents themselves used their caterpillar to smother the fire with dirt and emptied the contents of their water tank.

If I were to construct a majority opinion of the Board, I would not find that respondents had conducted open burning operations or had engaged in salvaging by open burning. Rather, I would find that the frequency of fires on respondents' premises, caused in part by sloppy work habits, constituted air pollution in violation of the Act.

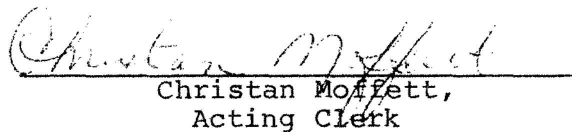
Under the Act, Air Pollution is defined as follows:

> " . . . the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

Several witnesses testified to the nuisance such fires created. Barbara Gillian complained that the black smoke from the junkyard causes black particles to settle on the clothes hung out on the clothesline (R.67,69). Her husband stated that he had to paint the house every year due to the black smoke (R.109). Joyce Hodge, another nearby

resident, complained of choking to death from the old, black, rubbery smoke (R.133). This Board has previously held that such emissions become "unreasonable" under the Act when there is proof that there is an interference with life and property and that economically reasonable technology is available to control the contaminant emissions. (See Moody v. Flintkote, PCB 71-69). The interference has been previously documented in this opinion. Further technology was available to the respondents in this case. Respondents could have watered down the gas tanks of the autos received, could have effectively separated the cutting operation from the storage of inflammable items, and could have maintained a year-round operational water tank. I would, therefore, find an air pollution violation, but believe that the good-faith effort made by the respondents allayed the need for the imposition of a monetary penalty. I would then order the additional precautionary steps outlined above to be implemented.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that Mr. Kissel submitted the above dissenting opinion this 9 day of December, 1971.



Christan Moffett,
Acting Clerk