ILLINOIS POLLUTION CONTROL BOARD
October 17, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 72-206
THE RILEY COMPANY	)	

DISSENTING OPINION (by Mr. Dumelle)

My reason for dissenting in this case is that I feel that a nominal penalty, perhaps $200, should have been assessed.

The stipulation shows that the incinerator emitted 67.3% more particulates than the standard set by our predecessor board, the Illinois Air Pollution Control Board. This violation is admitted to have occurred for 18 months and 20 days.

The arguments against a penalty as listed in the majority opinion are; (a) notices of possible violation were not received until January 11 and January 12 of 1972; (b) a penalty of $50 and costs has been paid; and (c) the incinerator has been shut down.

Since the majority did not see fit to dismiss the case by virtue of the Cook County Environmental Control Bureau action and penalty the argument of double jeoparty apparently does not hold. The closing down of the incinerator is only the company's program of compliance and we should not reward, by non-penalty, obedience to the law at a late date. And finally, a firm is presumed to know the air pollution control regulations and notices of violation are not required as a condition precedent to successful prosecution.

The Board has found the Riley Company guilty and I agree with that finding. The cost of a hearing officer, legal notices, Agency and Attorney General staff time, and the transcript should be borne by the guilty party absent a showing of poverty (see concurring opinion in EPA v. J. C. Dill, PCB 72-265, October 31, 1972). There is no showing of poverty here and I would have relieved the burden on the taxpayers of Illinois to prosecute this case by levying a penalty of $200.

Jacob D. Dumelle

Jacob D Dumelle
Board Member