

ILLINOIS POLLUTION CONTROL BOARD

May 23, 1972

ENVIRONMENTAL PROTECTION AGENCY)	
)	
)	
v.)	PCB 72-98
)	
TEXACO, INC.)	
)	

Dissenting Opinion by Jacob D. Dumelle

I was not present for the vote or final discussion on this case because of a simultaneous meeting of the Phosphorus Technical Committee of the Lake Michigan Enforcement Conference of which I am a member.

Settlements and stipulations ought to be approached with care because by definition they avoid the hearing process which in this case should have provided much more information. From the facts presented I cannot judge whether the \$200 penalty is adequate.

The essential first fact that is missing is the strength of contaminants injected into the Olney water supply and the period of this contamination. No where in the stipulation is a test given of the Olney water as delivered to the unsuspecting residents during those days around March 5-8, 1971. If we compare the downstream East Fork Creek samples analysis with U. S. Public Health Service Drinking Water Standards for a drinking supply we find gross contamination. The table below illustrates this point:

Parameter	March 8, 1971		Ratio Sample: Standard
	Downstream Sample	Supply Standard	
Chlorides	1, 250 ppm	250 ppm	500%
Total Solids	3, 650 ppm	500 ppm	1730%
Alkalinity	1, 700 ppm	400 ppm	425%
Iron	2. 0 ppm	0. 3 ppm	667%
Lead	0. 08 ppm	0. 05 ppm	160%
Phenol	52 ppm	0. 001 ppm	5, 200, 000%

We can assume that the iron, being lower in the downstream sample (2. 0 ppm) than in the upstream sample (4. 2 ppm) was probably removed by

whatever iron removal process (perhaps aeration) that Olney has to treat its supply unless the other contaminants caused an upset to occur. But what we do not know is whether the contaminated downstream sample is a fair analysis of what went into the Olney water mains. The City of Olney perhaps had a reservoir from which some dilution was obtained. Perhaps there are other surface water inputs to East Fork Creek between the well site and the water supply intake that served to dilute these extremely high levels.

The Texaco Company's own analysis seems to show high sodium concentrations. More than 12% of the discharge was in sodium compounds. But while we know that a new sodium standard for drinking water supplies at 200 ppm will probably appear in the July 1972 revision of the US PHS standards we again do not know how much sodium got into Olney's water mains. Persons with heart conditions or hypertension are often put on a low sodium diet and perhaps there were some ill effects from this pollution incident. Also the phenol level was 52,000 times the standard. Chlorination, a standard practice at water works, would generate chlorphenols. Again we have no information on possible ill-causing levels of phenols or chlorphenols.

The data discussed previously show some discrepancy if one tries to compute a dilution ratio between the well effluent and the stream. The Texaco analysis shows 2,670 ppm phenols and the downstream sample shows 52 ppm for an apparent dilution of 51.4 times. The lead from the well is reported at 213 ppm and the lead added (downstream minus upstream) is 0.05 ppm for an apparent dilution of 4260 times. Why the two dilution ratios do not agree we do not know on the basis of the sketchy stipulation here submitted.

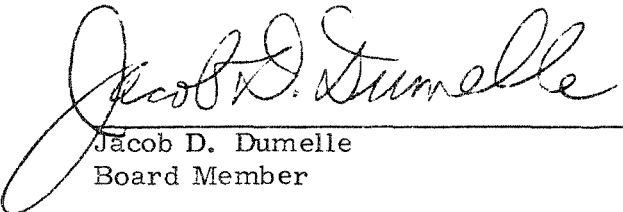
We also do not know the expenditures made by Texaco in this case. What did the "rebate on the monthly for the period of time the water was affected" amount to in dollars? What did it cost to clean up the area of the spill? We should not fall into the precedent of saying as we do in this case that if one pollutes a water supply and then pays for the non-use plus perhaps minor cleanup costs that this excuses the pollution. That is like saying no prosecution will follow a burglar who returns the stolen goods when caught so long as the jimmed door is repaired.

There are three other aspects to this case that are disturbing to me. First the case was filed on March 16, 1972 after occurring March 5-6, 1971. In that year's delay it is possible that citizens who were angry then or made ill at this unwarranted pollution of their drinking water might have forgotten about it by the time of the legal notice of the action. The cases ought to be filed promptly after incidents occur of this importance. Justice delayed is still justice denied.

Secondly, on the same day of this decision, the Board accepted a stipulation in EPA v. Rex Chainbelt, Inc. (PCB 72-86) for permitting their plating operation to leak and discharge cyanide and heavy metals to St. Joseph's Creek and entered a stipulated penalty of \$2,000. No water supply was contaminated nor did human beings drink contaminated water because of this accident. Yet the agreed penalty was ten times as much as in the Texaco case!

Thirdly, the Board deleted from its Water Quality Regulations adopted March 7, 1972 a provision to require mandatory catchment facilities from facilities such as tank farms, which might leak and pollute. We do not know on this stipulation whether catchment provision had been made beforehand. If it was not then it would appear that the Agency ought to consider proposing such a regulation for all pollution prone sources near water supply intakes.

I would not have accepted this stipulation but would have referred it back for additional information pertinent to the points mentioned above.



Jacob D. Dumelle
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 23 day of May, 1972.



Christan L. Moffett, Clerk
Illinois Pollution Control Board

