

ILLINOIS POLLUTION CONTROL BOARD

MINUTES OF INFORMAL REGULAR MEETING

August 24, 1970 - 189 West Madison Street, Chicago

Mr. Currie announced that hearing dates had been set for the proposed procedural regulations and for the proposed mercury standard. Procedural hearings were to be held in Chicago on September 16 and Alton on September 18, and mercury hearings in Springfield September 30, and Chicago, October 2.

Mr. Dumelle reported that the Federal Water Quality Administration was now planning its thermal pollution conference for September 28 and 29 in Chicago.

IBM dictation equipment was demonstrated for the consideration of the Board by Mr. Jerry Allen.

Mr. Lawton reported that his draft opinion in the Swords case had been completed and would be circulated in the next day or two to members of the Board. Mr. Kissel reported that the Edison hearing would probably be scheduled for the week of September 9.

With regard to the statement prepared by Mr. Lawton and Mr. Kissel as to the settlement of Board cases, Mr. Lawton argued that the Board ought to distinguish sharply between two kinds of settlements. On the one hand, it might be entirely proper for the parties, with the agreement of the Board, to enter into a consent decree in cases pending before the Board. On the other hand, once the Board has entered its decision, the parties ought not to be encouraged to seek essentially a rehearing of the Board's decision by a rule inviting compromise. Mr. Kissel argued that it would not be good policy for the Board to announce that it would never settle cases because settlement even after a Board decision might serve to lessen the pressure of court dockets. Indeed, Mr. Kissel was of the opinion that a rule stating that settlement required Board approval would have a tendency to discourage settlement by making it clear to the parties that they could not settle cases at any stage without the approval of the Board. He agreed with Mr. Lawton that it would not be proper for the Board to accept a stated formula for accepting a given portion of an assessed penalty as is done in personal property cases, but he thought it would be proper to leave the matter to case by case decision of the Board. Dr. Aldrich said that there might be two distinct reasons for a proposed settlement; namely, to avoid the risk of litigation on the one hand and because of the belief that the original fine was too high on the other. He thought the Board was entitled to know in each case which of these reasons prompted the Attorney General to propose

a settlement. At Mr. Kissel's suggestion, Mr. Currie agreed to ask the Attorney General for a statement explaining why he proposed settlement in the two cases now before the Board and on the basis of the Attorney General's reply, the Board could then render an opinion which would serve to develop the Board's policy on settlement on a case by case basis. Mr. Lawton and Mr. Kissel agreed to work further on the proposed draft rule regarding settlements.

Mr. Dumelle adverted to a possible loophole in the proposed rule for financial disclosure in that tangible personal property such as paintings and Cadillacs need not be reported. He argued that what was desired was a comparison of net worth before and after membership on the Board. Mr. Lawton said that he would not object to a requirement of total disclosure, but that he thought the problem of increased wealth during Board membership was amply covered by the requirement that gifts and income be disclosed. Dr. Aldrich suggested that there might be a problem of invasion of privacy if tangible personal assets were disclosed, and he added that there might be a difficulty in valuing such items.

Mr. Dumelle noted the desirability of having the Board represented at water pollution conferences called by the Federal Water Quality Administration. Board chairmen from other states, he said, commonly attended along with the official conferees and participated in the questioning. The Board ought to have an official role in such conferences, he added, because the conferences were concerned not only with the collection of water quality and effluent data but also with substantial policy questions that came within the purview of the Board. Mr. Dumelle added that the conferences, in general, had not worked well, that the Calumet conference, in particular, had been a farce, and that because Illinois had taken steps to see to it that most of its wastes which reach Lake Michigan would be diverted elsewhere, Illinois was in a particularly good position to take a strong stand against Lake Michigan pollution from other states. The other Board members agreed that the Board ought to be represented in these conferences, and Mr. Currie agreed to pursue whatever steps were necessary to that end with various state and Federal officials.

At Mr. Dumelle's suggestion, the Board agreed to ask Mr. Klassen of the Environmental Protection Agency to attend the Board's next Monday meeting with his top air and water pollution experts in order to work out with the Board a series of presentations by the EPA at regular Board meetings in which the EPA would brief the Board members as to existing water quality standards and water quality problems in various parts of the State in which the meetings were held.

Mr. Lawton adverted to an article that had recently appeared in Chicago magazine and which had prompted a Daily News editorial, all with regard to Federal water pollution laws of rather ancient vintage. Since the Chicago magazine article had been highly critical of the legislation under which the Board operates and since it had achieved a wide circulation, Mr. Lawton asked whether it might not be appropriate to circulate a memorandum within the Board itself dealing with the matters discussed in the article. Mr. Currie agreed to prepare such a memorandum.

Mr. Currie announced that the Institute was prepared to secure the testimony of witnesses at Board rule-making hearings within the limitations of the Institute's budget and, more particularly, of its present small staff. Board members were encouraged to give to Mr. Schneiderman the names of any witnesses desired to testify and the Institute would make the necessary arrangements.

Mr. Lawton asked about the proposed requirement that written testimony be submitted in advance of a rule-making hearing. Mr. Kissel argued that witnesses should not be forbidden to testify on the ground that they had failed to submit their testimony in advance in writing and that an opportunity to cross-examine witnesses could be afforded by scheduling an additional session of the hearing later and by requiring the witnesses to come back for questioning by subpoena if necessary. Mr. Kissel said it would probably be desirable to have witnesses sign in if they wished to testify. Mr. Currie added that it would be desirable to have the proponents of a proposed rule or regulation testify first but that, thereafter, the order should be first come first served in order to avoid a discrimination against the ordinary citizen who has taken time away from his job or who has hired a babysitter in order to make it possible to testify. Dr. Aldrich added that the Board had a responsibility to assure that it had an adequate record on which to base its rule-making decisions and Mr. Kissel responded that a hearing should be re-opened if the record obtained at the original session was inadequate. Mr. Lawton suggested that it would be advisable for hearing officers in rule-making cases to arrange a room and time for an additional session in case such a session became necessary and that it would also be helpful to make clear at the outset of a hearing that all who wished to testify would be heard before the hearing was adjourned. Mr. Kissel noted that obtaining hearing rooms could be a real problem. Mr. Dumelle noted that the Metropolitan Sanitary District hearing room, which seats approximately 150 people, is usually available.

Mr. Currie outlined his discouraging efforts to obtain guidance on the difficult problem of automotive pollutants from the Federal criteria and control documents and suggested that if the EPA did not

very soon propose the adoption of air quality standards for these pollutants the Board itself propose the adoption of the standards which had formerly been proposed by Mr. Klassen to the old Air Pollution Control Board in order to stimulate public discussion. Mr. Dumelle suggested that the Board also contact Mr. Van Mersbergen to see whether direct assistance could be obtained from NAPCA.

Mr. Kissel inquired how the Board ought to respond to the recommended changes in water quality standards suggested by FWQA. Mr. Dumelle suggested that the FWQA proposal should be viewed not as formal rule-making proposals on which hearings must be scheduled at once but as a package of suggestions among which the Board should pick and choose according to its own priority judgments. For example, he suggested that the subject of pesticides might deserve the Board's immediate attention. Mr. Kissel suggested that the Board might consider taking quick action on FWQA proposals which were relatively easy to support and to adopt, such as the suggested modification of the oil standard. Dr. Aldrich raised again the issue of the impact of FWQA's suggested thermal standard of 84° upon waters whose natural temperature during some seasons exceeded that standard. What was significant, he argued, was not the absolute temperature of the water but the effect of man-made discharges upon that temperature. Accordingly, he said, it would be better to regulate the rise over background temperature. Mr. Dumelle replied that what Dr. Aldrich suggested was indeed incorporated into all federal temperature standards but that it was desirable, in addition, to set a number in order to simplify the task of determining what constituted natural temperature.

I, Regina E. Ryan, certify that the Board has approved the above minutes this *2nd* day of *Sept*, 1970

  
Regina E. Ryan  
Clerk of the Board