

ILLINOIS POLLUTION CONTROL BOARD
February 27, 1992

IN THE MATTER OF:)
)
DIESEL VEHICLE EXHAUST) R90-20
OPACITY LIMITS) (Rulemaking)

ADOPTED, RULE

FINAL NOTICE

DISSENTING OPINION (by R.C. Flemal):

I dissent from the action taken today by the majority. I cannot see that the amendments to our diesel exhaust rule as today adopted offer any significant improvement over the previous rule. Moreover, I fear that, good intentions notwithstanding, today's amendments could actually worsen problems associated with diesel exhaust.

This proceeding started with a laudable goal: to "upgrade" a not-very-effective diesel exhaust rule. It also started from a logical premise: that Illinois might profitably model a revised diesel rule upon the proven regulations of another state (California). The Board accordingly gave the idea a trial by offering the "California regulations" for first notice.

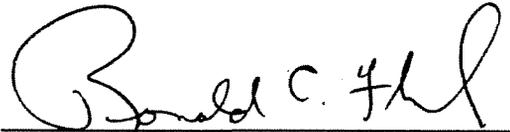
However, it was apparent soon thereafter that as a threshold matter it was not possible for the Board to adapt the "California regulations" to Illinois, no matter what merits the California model might be viewed as having. The Board simply does not have the authority to implement major portions of the "California regulations"; neither does the mix of agency duties, responsibilities, and resources in Illinois lend itself to the California model.

With these realizations in hand and if anything at all was to be done, I believe that the Board should have "started over" by discarding the California model and looking to other alternatives. Instead, it chose to move a shadow of the California model to second notice and today to final adoption. What has been adopted thereby bears little resemblance to the proposal upon which most of the record is focused. It also has not been afforded the scrutiny of hearing and full comment.

Given this history, it is perhaps fortunate that the only substantive element of today's amendments is the replacement of the visual opacity test with the snap idle test. This is done under the theory that the visual opacity test is unenforceable (the merits of which are debatable). However, there is a theory

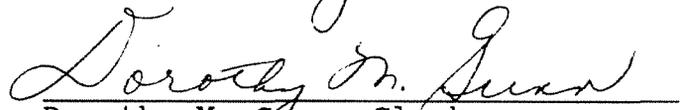
that the snap idle test, too, is unenforceable (a theory with which even the majority appears to agree).

At its best, today's action would thus appear to have replaced one unenforceable test with another unenforceable test. At its worst, today's action may lessen the ability to enforce against diesel exhaust violations (see e.g., the comments of the Illinois Environmental Protection Agency at PC #133 and of the Chicago Lung Association et al. at PC #135).



Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 27th day of February, 1992.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board