

ILLINOIS POLLUTION CONTROL BOARD

April 19, 1971

GAF CORPORATION)
)
 v.) #PCB 71-11
)
 ENVIRONMENTAL PROTECTION AGENCY)
)

Supplemental statement by Samuel R. Aldrich, Board Member

Though I do not disagree with the order, I am disturbed over the general tone of this opinion. It is more harsh than is justified by the record. Examples:

"incredibly dilatory" (Agency language supported by the PCB opinion)
"former excuse is feeble"
"excuse is ... wholly circular"
"go on dumping wastes indefinitely"
"incredibly maintains"
"get off its corporate backside"
"Jail sentences would appear highly appropriate"
"This would result in lost profits, with which on the record we have no concern whatsoever"

GAF recited a list of 22 dates on which tentative plans were filed, changes were made from one engineering consulting firm to another, delays resulted from lack of approval for land use from the Metropolitan Sanitary District, and finally a statement was received from the Army Corps of Engineers March 22, 1971, suggesting that GAF should wait for certain federal EPA guidelines that would be available "within a few weeks" after a Washington, D. C., conference scheduled for Spring 1971. The Board opinion lumps nearly all of these activities in the general category of dilatory tactics. I do not doubt that had GAF decided in 1967 precisely what course it would pursue it could have accomplished both primary and secondary treatment by this date.

But the climate with respect to pollution abatement was, unfortunately, totally different in 1967 than it is now. There was no Environmental Protection Act. Some rules and regulations were only guidelines lacking the status of law. Agencies administering the applicable regulations at that time had a different attitude as evidenced by the statement of C. W. Klassen April 10, 1970, in which the Sanitary Water Board stated that GAF "had shown diligence". The Mayor of Mattoon (PCB 71-8) stated the prevailing situation quite accurately as follows:

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"There has been a change of policy in this state in my opinion.I'm not criticizing the change of policy, but I think now the State is saying you have to do this when not too long ago they were much more willing to go along with you on an extension of time and of the deadlines."

The present high level of concern on the part of citizens, politicians, city officials, and industry simply did not exist in 1967. There was no established record of an aggressive Pollution Control Board to alert GAF and other industries and municipalities to the impending impact of strict enforcement under new agencies and enabling legislation.

Furthermore, industries had little or no experience in many pollution abatement technologies.

I am fully aware of the reality of a law even though it is customary not to enforce it very diligently. But understanding the mood of the times is helpful in placing in perspective the activities of industries and municipalities prior to July 1, 1970, which the Board now repeatedly describes as dilatory. It can be argued that the use of abrasive language will earn more headlines in the media, thus alerting industries, municipalities and individuals to the risk of prosecution and perhaps speeding up compliance with pollution laws.

In my opinion there is a high cost to be paid for that course of action for a small gain in time of compliance. It gives the impression of a vendetta whereas environmental protection and improvement can and should be more in the nature of a crusade. It maligns the integrity of corporate executives and city administrators. It discredits the free enterprise, capitalistic system which is no more guilty of indiscriminate pollution than systems in other parts of the world but is far more productive of human wants.

Opinion language that unnecessarily antagonizes industries will, if anything, make the work of the Board more difficult in the future especially during the hearing process.

A specific area of the opinion with which I disagree is paragraph 2, page 8. It states that employees should, through the exercise of bargaining power by their labor unions, become an aggressive force to end pollution by industry lest the factory be closed and they be put out of work. I believe that it is the responsibility of corporate management, not labor, to manage the company. In the reverse, labor would not be receptive of suggestions from management on how to conduct affairs of the workers though the corporation will undoubtedly be affected by their activities.

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One can hardly logically argue that the interests of the workers and of management are different with respect to penalties and possible closure of the factory.

I also disagree with a following suggestion in the same paragraph that an employee who loses his job because of plant closure "may have legal remedies against his employer". This is certainly double or triple jeopardy to the employer: 1) possible money penalty, 2) loss of profits, and 3) "legal remedies" by his employees.

If, as the opinion states, the union is "not altogether innocent" then in the interest of fairness the opinion should also suggest that the individual employee might use "legal remedies" against his union leaders. I don't find that suggestion in the opinion.

Samuel R. Aldrich

 Samuel R. Aldrich, Board Member
May 6, 1971

 Date

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board certify that Dr. Samuel R. Aldrich submitted the above supplemental statement on _____ day of _____ 1971.

 Regina E. Ryan
 Clerk, Illinois Pollution Control Board