

ILLINOIS POLLUTION CONTROL BOARD  
October 6, 1988

MONSANTO COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-19  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, and )  
 JOHN E. NORTON, )  
 )  
 Respondents. )

CONCURRING OPINION (by J.D. Dumelle):

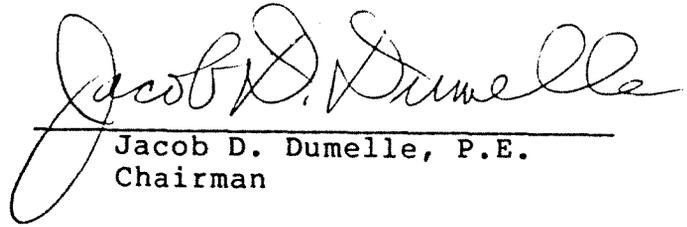
For the following reasons, I concur in the Board Order issued October 6, 1988.

First, although I would have granted Monsanto's motion to stay to allow Monsanto and the Agency an opportunity to arrive at an agreeable resolution to this matter, I concur in the Board's Order in that I believe it accomplishes the same result.

Second, I do not, at this time, possess the Board's perception that "only three viable alternative courses of action" exist and are as set forth in the Order. As there is not much precedent for the issues presented in this case, I would prefer to withhold judgment on possible courses of action until all the facts and arguments are presented.

Finally, the Board supplemented its Opinion with "an aside note on the peculiar timing of the Monsanto motion." I do not share the Board's belief that motions subsequent to Board discussion are necessarily inappropriate. I do agree that motions submitted after Board discussion which are designed to forestall the indicated outcome may be inappropriate. But I strongly believe that Board practice must be flexible to permit adjudicative proceedings to keep pace with changing circumstances, whenever that may be. Further, I do not believe that the "aside note" was appropriate in this case. Although Monsanto's motion was filed after Board discussion, the Order ignores the fact that this proceeding has lain dormant for nearly three years, and not by any fault of the parties. The Board discussion was the first indication that the Board was once again giving its attention to this case. Circumstances may have changed during this period of dormancy such that the parties may have different objectives than they previously possessed. I do not think it unreasonable that Monsanto would now, after three years, want to reassess its situation.

For these reasons, I respectfully concur in the Board's Order.

  
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Jacob D. Dumelle, P.E.  
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 15<sup>th</sup> day of October, 1988.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board