


ILLINOIS POLLUTION CONTROL BOARD  
April 6, 1989

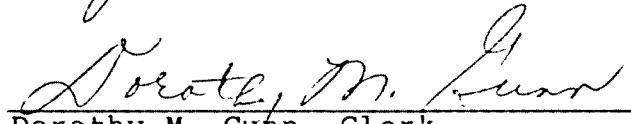
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 86-27  
 )  
MODINE MANUFACTURING CO., )  
 )  
Respondent. )

CONCURRING OPINION (by J. Theodore Meyer):

I concur in the findings of the majority, and I reluctantly concur in the amount of the penalty imposed. However, I must again voice my concern about the manner in which penalties for violations of the Environmental Protection Act (Act) are set by the Board. The majority opinion, upon remand from the appellate court, does address the guidelines of Section 33(c) of the Act, as I asked in my February 4, 1988 concurring opinion. There is no discussion, however, of any economic benefit to Modine because of its delay in complying with the Act. (As pointed out by the majority, this factor has been recently added to Section 33(c). Assuming arguendo that the Board cannot consider this addition to the statute, I still believe that economic benefit should be taken into account. Section 33(c) sets forth some factors to consider, but states that the Board's consideration is "not limited to" the articulated factors.) Allowing Modine to benefit economically by its non-compliance penalizes Modine's competitors who have complied with the Act, and may even encourage others to view penalties for violations as costs of doing businesses. In other words, it may be cheaper for a company to violate the Act and later pay a relatively small penalty, than to comply with the Act and the Board's regulations from the beginning. I believe that it is of utmost importance, both to the environment and in fairness to those companies which do comply with the Act, that a violator's economic benefit from non-compliance be strongly considered when imposing a penalty.

  
\_\_\_\_\_  
J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 6th day of April, 1989.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board