

ILLINOIS POLLUTION CONTROL BOARD
May 9, 1986

DUPAGE PUBLICATIONS CO.,)
)
 Petitioner,)
)
 v.) PCB 85-44, 85-70
) 85-130
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by J. D. Dumelle):

I dissent from the Majority's Opinion because the relief requested by DuPage is more appropriately considered within the context of the Board's regulatory or variance procedures rather than the permit appeal procedures. DuPage is arguing either for an amendment or an exception to the Board's new source review (NSR) rules which would exempt DuPage's six heatset web offset presses from the Board's NSR permit process.

The NSR rules constitute a preconstruction review program for any qualifying construction or major modification of a major stationary emission source in a non-attainment area. The NSR rules are intended to ensure that as-built or modified potentially large sources of air pollutants do not contribute to a region's air quality problems. Since DuPage's facility lies within a non-attainment area for ozone, any construction or major modification which qualifies would be subject to the NSR permit process.

The conditions imposed by the Agency's in DuPage's permit for press nos. 1-5 were imposed so that the operation of these five presses would not trigger the NSR rules. However, the operation of press no. 6 would trigger the NSR rules and because DuPage failed to address these rules in its permit application, the Agency denied a permit for press no. 6. I support the Agency action. A plain reading of the applicable Board rules clearly supports the Agency's position that the emissions from press no. 6 require the application of the New Source Review rules. I see nothing ambiguous in those rules as applied to DuPage and see no reason, therefore, to look behind them to attempt to discern the intent of those rules. The majority has by interpretation blithely amended the Board's NSR rules to exclude "DuPage-type" organic material emissions from regulation without the necessary procedural and substantive protections provided by the

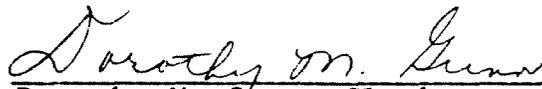
Environmental Protection Act and the Illinois Administrative Procedure Act. I believe that the plain reading should be followed. Board rules should be held to mean what they say or the affected public will be at a loss as to how it should comply with the rules. What types of emissions will be exempted next? What new interpretation of the plain meaning will arise in the next case?

Perhaps the NSR rules should be changed; perhaps they do include too large a class of emissions. If so, let that change be made in a rulemaking, not through an interpretation that the rules don't mean what they say in a proceeding in which the members of the affected public are left out.



Jacob D. Dumelle, P.E.
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 15th day of May 1986.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board