

ILLINOIS POLLUTION CONTROL BOARD
September 11, 1986

IN THE MATTER OF:)
)
VOLATILE ORGANIC MATERIAL) R82-14
EMISSIONS FROM STATIONARY)
SOURCES: RACT III)

DISSENTING OPINION (by J. D. Dumelle):

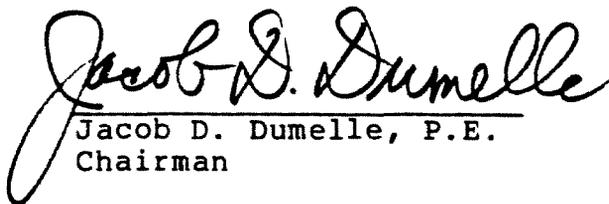
Section 215.612(b) as proposed here by the majority appears to contravene both the Administrative Procedure Act and the doctrine of non-delegation.

A Federal action designating an Illinois county as non-attainment (presumably for ozone) would make any petroleum dry cleaner in that county or in contiguous counties subject to these rules. This dry cleaner would have a year or less to comply since December 31, 1987 is given as an outside date.

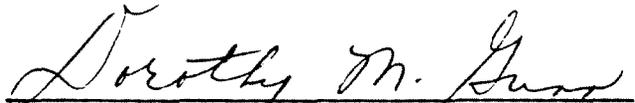
How would the dry cleaner even know that it is subject to this rule? There would be no publication in the Illinois Register of this Federal designation of non-attainment. What if it were inordinately expensive to comply with these rules? There would have been no opportunity for a hearing on the economic hardship created. And what happens after December 31, 1987? Is no time given to comply?

The Pollution Control Board is assigned the environmental rulemaking function by the Environmental Protection Act. That function, once assigned, cannot be redelegated. A Federal action cannot impose the triggering of a rule in Illinois unless the Legislature has expressly provided for that by statute. That has not been done.

Finally, Section 215.612(b) does not specifically designate "non-attainment for ozone" as the action at issue. It could be read that any non-attainment designation, whether for particulate or sulfur dioxide or carbon monoxide or oxides of nitrogen would trigger the rules.


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 11th day of September 1986.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board