

ILLINOIS POLLUTION CONTROL BOARD  
April 29, 1982

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 78-226  
 )  
 MODERN PLATING CORPORATION, )  
 )  
 Respondent. )

DISSENTING OPINION (by J. Anderson):

I dissent because I believe that the Board should not have accepted a stipulation in this case that did not include a monetary penalty.

I fully appreciate the Board's reluctance to further prolong this case. I also appreciate the Attorney General's success in vigorously pursuing the criminal proceeding even though it was unfortunate that the issue of potential Board penalties became involved. However, I believe the Board allowed itself to become inappropriately entangled in the outcome of the criminal proceeding. This stipulation did not contain a penalty solely because a criminal penalty had already been imposed on the respondent and paid by it to the Circuit Court of Stephenson County.

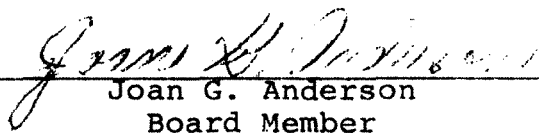
Nothing in the Act generally, and specifically under Title XII: Penalties (Sec. 42-45), provides for a superseding of remedies in one action over another. In fact, Section 45(a) makes additionally clear that "No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by this Act." Indeed, the potential liability for Board-imposed monetary penalties is even greater for a violation relating to an NPDES permit program (see Sec. 42(a)). And the violations in this case warranted a penalty. Imposition of a penalty in court for actions found to be criminal in nature is hardly a mitigating factor in a case before the Board.

Nothing in the Act relieves the Board of any of its statutory responsibilities to provide remedies appropriate to the case before it pursuant to Section 33 of the Act. A plea bargain or any other settlement agreed to by others in a court action is no substitute. The Board recognized this distinction in an Opinion addressing a variance petition (County of DuPage v. IEPA, PCB 80-160, January 22, 1981), where an earlier court settlement provided for phased-in connections to a treatment plant that was

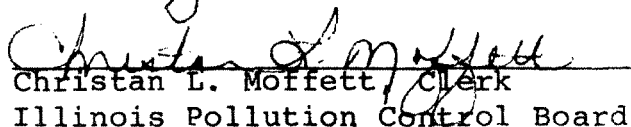
out-of-compliance with the Board's regulations (People of the State of Illinois v. County of DuPage, 80MR422, by the Court for the 18th Illinois Judicial Circuit). The Board stated in part: "...compliance with the effluent limitations of the Court's Order does not constitute compliance with the Act or the Board's rules," and "...non-compliance with that [court] Order is of course independently enforceable."

It is inherently unfair to penalize those who, though violating the act, are not involved in criminal behavior, and not penalize those who have been involved in criminal behavior. If the Court settlement had exonerated Modern Plating of criminal behavior, I doubt that the Board would have accepted this no penalty stipulation. The "they have suffered enough" argument is misplaced. Deterrence and punishment are not the same thing.

Finally, it should be noted that Board imposed monetary penalties go into the State's general revenue fund. The monetary penalty in the criminal proceeding was paid to the County.

  
 Joan G. Anderson  
 Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 5<sup>th</sup> day of May, 1982.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board