

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1972

ENVIRONMENTAL PROTECTION AGENCY)
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 v.) PCB 72-210
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)
 PROCTER & GAMBLE MANUFACTURING)
 COMPANY, INC.)
)

DISSENTING OPINION (by Mr. Dumelle)

This case involves the failure to obtain a State permit until 13-1/2 months had elapsed after construction started. The July 1, 1970 enactment of the Environmental Protection Act repealed all local exemptions. The Board opinion in EPA v. American Generator and Armature Company (PCB 71-329, January 6, 1972) is quite clear and gives the legislative history of the Act on this point.

Besides notice given by the passage of the Act, the Board itself gave additional notice of the permit requirement on October 8, 1970 in explicitly repealing the old exemption regulations (R70-1). The Board Newsletter No. 7 of October 16, 1970 carried an item (p. 2) describing this repeal.

The Second Report of the Board, written by Chairman David P. Currie, appeared as part of Newsletter No. 25 dated June 30, 1971 and on page 2 the same R70-1 is again mentioned as the "formal repeal of obsolete provisions for exempting local areas from the state law."

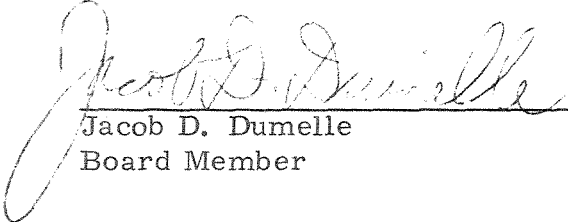
And so we have in the instant case, three separate and distinct public notifications that Chicago was no longer exempt from State requirements: the passage of the Act; the actions and notices involved in the R70-1 enactment; and the Second Report of the Board. The first two of these notices had occurred by October 16, 1970 which was 4-1/2 months before Boiler No. 12 construction was started on March 1, 1971. The Boiler No. 11 conversion, also without a permit, was started about July 1, 1971 simultaneously with the Board's publication of its third "notice" in this matter. And Boiler No. 10's conversion without a permit did not start until October 1, 1971, well after that third "notice" had been sent.

On December 28, 1971 an EPA employe personally notified Procter and Gamble of the permit requirement and thereafter the company took action with reasonable promptness and secured the Boiler No. 12 permit on April 18, 1972, some 13-1/2 months after the start of construction.

In another action today we adopted an opinion rejecting a proposed settlement stating

The fact that PCA was not personally notified of the law is no excuse. The law was on the books and they were under a duty to find out what it said.
(Packaging Corporation of America v. EPA,
PCB 71-352, 72-10).

Procter and Gamble is a great national corporation and should also have been aware of the law. I dissent in this case as I did in the earlier American Generator case (supra). Ample notices were given in the matter. The Agency recommendation of a \$500. penalty for these three permit violations was, if anything, too low, but should have been adopted over a flat dismissal.


Jacob D. Dumelle
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 16th day of August, 1972.


Christan L. Moffett, Clerk
Illinois Pollution Control Board