

ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

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| ENVIRONMENTAL PROTECTION AGENCY, |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 73-372 through |
| |) | PCB 73-379 |
| COMMONWEALTH EDISON COMPANY, |) | |
| Respondent. |) | |

Mr. Kenneth J. Gumbiner and Mr. Marvin I. Medintz, Assistant Attorney Generals, appeared for the complainant;
Mr. Richard E. Powell, Isham, Lincoln & Beale, appeared for Respondent.
Mr. James R. Fancher, System Environmental Engineer, Commonwealth Edison Company.

DISSENTING OPINION (by Mr. Goodman):

Today the Board issued an Opinion and Order on PCB 73-372 through PCB 73-379. In this Order the Board noted that Respondent Commonwealth Edison Company had violated Rule 103(b)(2) of Chapter 2, Part I of the Rules and Regulations governing air pollution and Section 9(b) of the Environmental Protection Act, in that they had failed to obtain permits required by April 1, 1973. I am in total agreement with the majority Opinion and Order of the Board as written by Mr. Dumelle with the exception of the amount of penalty assessed.

The original Order prepared by Mr. Dumelle indicated that Edison's continued delay warranted a total penalty of \$32,000. I agree with that Opinion and with that estimation of the penalty to be assessed. In the Board's subsequent discussion of the Order and the amendment proposed, which would reduce the penalty to \$17,000, the only argument put forth in support of such lower penalty was that the Board in the past had generally imposed a penalty of \$1000 for each unit which had not received a permit. In the original Opinion, a \$2000 penalty was imposed due to the circumstances surrounding the lack of good faith on the part of Edison in pursuing the permit applications.

I do not believe it should be the Board's purpose to establish limitations on penalties based upon that amount imposed in past cases. Each case must stand on its own merits and the penalties imposed must reflect the merits and the mitigating circumstances in that particular case. If, in this case, Edison had shown

great mitigation such as destruction of their records, etc., would the Board then have imposed a \$1000 fine merely because that is the amount generally imposed for this sort of case? If it had, I feel that that would have been patently unfair.

Therefore, having satisfied myself that the originally proposed penalty of \$32,000 was fair and equitable, and hearing nothing in mitigation besides the dangerous precedent of setting penalties based upon past limitations, I must respectfully dissent.


Irvin G. Goodman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 12th day of May, 1975.


Christan L. Moffett