

citizens of this State are faced with a recurring fire menace, their proper recourse is to the State Fire Marshal and his investigatory and penalizing powers under Chapter 127-1/2 of the Illinois Revised Statutes, not to the Illinois Pollution Control Board.

Nor did the Agency present any evidence that respondents were conducting salvage operations by open burning. There was nothing in the record to substantiate that respondents were burning auto hulks to enhance their value on the market. One simple question put to the operators of the salvage yard would have sustained such an allegation, but no such question was posed. Further, there is evidence to the contrary; i.e., in one of the fires their new wrecker burned, in another car seats that were being saved to be used as diking material were consumed.

On page 4 of the Board's opinion, Mr. Lawton states: "Where 2500 cars are stored for ultimate salvage operations, where gasoline is present in all or most of them, and where fire is used for dismantling, the auto salvage operator has a heavy burden of seeing that no fires occur, or if they do occur, that they are immediately extinguished." In the instant case, respondents bore that burden. When fire occurred, the fire department was called and the respondents themselves used their caterpillar to smother the fire with dirt and emptied the contents of their water tank.

If I were to construct a majority opinion of the Board, I would not find that respondents had conducted open burning operations or had engaged in salvaging by open burning. Rather, I would find that the frequency of fires on respondents' premises, caused in part by sloppy work habits, constituted air pollution in violation of the Act.

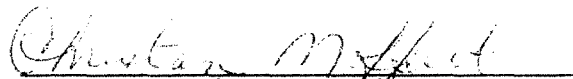
Under the Act, Air Pollution is defined as follows:

" . . . the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

Several witnesses testified to the nuisance such fires created. Barbara Gillian complained that the black smoke from the junkyard causes black particles to settle on the clothes hung out on the clothesline (R.67,69). Her husband stated that he had to paint the house every year due to the black smoke (R.109). Joyce Hodge, another nearby

resident, complained of choking to death from the old, black, rubbery smoke (R.133). This Board has previously held that such emissions become "unreasonable" under the Act when there is proof that there is an interference with life and property and that economically reasonable technology is available to control the contaminant emissions. (See *Moody v. Flintkote*, PCB 71-69). The interference has been previously documented in this opinion. Further technology was available to the respondents in this case. Respondents could have watered down the gas tanks of the autos received, could have effectively separated the cutting operation from the storage of inflammable items, and could have maintained a year-round operational water tank. I would, therefore, find an air pollution violation, but believe that the good-faith effort made by the respondents allayed the need for the imposition of a monetary penalty. I would then order the additional precautionary steps outlined above to be implemented.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that Mr. Kissel submitted the above dissenting opinion this 9 day of December, 1971.



Christan Moffett,
Acting Clerk

