

ILLINOIS POLLUTION CONTROL BOARD
September 29, 1975

ASHLAND CHEMICAL COMPANY,)
 Petitioner,)
)
 v.) PCB 75-174
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

DISSENTING OPINION (by Mr. Dumelle):

My reason for dissenting in this case lies in the interpretation of the air quality data of the Burlington-Keokuk Interstate Air Quality Control Region which was designated effective March 31, 1971, under 42 CFR 481.98.

This Air Quality Control Region contains ten counties in Illinois and two in Iowa. Among these Illinois counties are Peoria County and its neighbor across the Illinois River, Tazewell County. Ashland is located in Peoria County.

The Agency's Response to the September 8, 1975, Board Order (filed September 23, 1975) clearly shows violations of the Federal sulfur dioxide air quality standards at both Peoria (in Peoria County) and at Pekin (in Tazewell County). Violations are shown for the 24-hour standard to the extent of three in Peoria and one in Pekin. In addition, the annual average for sulfur dioxide of 0.031 ppm violates the national and Illinois standard of 0.030 ppm.

These are more than de minimus violations, especially in light of the Agency's twice stated position that "a significant sulfur dioxide...air quality problem exists in the Peoria Major Metropolitan Area." (Agency Response filed September 23, 1975, p.3. See also Agency Recommendation filed August 25, 1975, p.6.)

The Ashland Response to the Board Order, (filed September 18, 1975) is incomplete. It discusses wind direction in conjunction with the recorded violations at the downtown Peoria site but wholly fails to discuss the violation at the Pekin site. It gives Battelle Columbus Laboratories study findings, but the Battelle Report itself was never submitted into the record of this case even though in Ashland's possession (Response, p.1).

The Board majority by this decision has stated again that close-in violations (or lack of them) are what matters. The Ozark site is seven miles from Ashland and shows no violations. But Pekin is only 4 miles away and has had a violation. Thus the doctrine implicit in the majority decision was not thoroughly substantiated in this case.

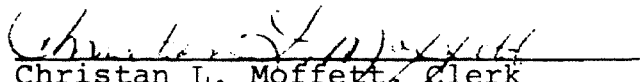
In other dissents I have explored the possible legal constraints under Train v. NRDC of granting variances in Air Quality Control Regions where air quality violations exist. (See Shell Oil Co. v. EPA, PCB 75-90, May 22, 1975, and Iowa-Illinois Gas and Electric Co. v. EPA, PCB 75-150, June 26, 1975.) Future court decisions may clarify these legal points.

Besides the above legal questions, the rationale of stating, as the Board majority does, that these sulfur dioxide emissions in violation of Board regulations will not cause air quality violations is a tenuous one. The Ashland sulfur dioxide emissions certainly add to the annual average violation of the standard cited by the Agency. And under high pressure anti-cyclonic meteorological conditions, fitful breezes often occur which bring parcels of polluted air into and around an area in such a way as to confuse the "upwind-downwind" simple form of analysis used here.

Ashland is in the Peoria-Pekin "airshed". This airshed has violations of the pertinent air quality standard. I would have denied the variance under the Supreme Court's strictures in Train v. NRDC.


Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 3rd day of October, 1975.


Christan L. Moffett, Clerk
Illinois Pollution Control Board