

ILLINOIS POLLUTION CONTROL BOARD  
February 14, 1975

CITIZENS FOR A BETTER ENVIRONMENT, Complainant,	)	
	)	
v.	)	PCB 74-201
	)	
STEPAN CHEMICAL, Respondent.	)	
	)	
STEPAN CHEMICAL, Petitioner,	)	
	)	
v.	)	PCB 74-270
	)	
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	
	)	
STEPAN CHEMICAL, Petitioner,	)	
	)	
v.	)	PCB 74-317
	)	
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

CONCURRING OPINION (by Mr. Dumelle):

I concur in the result of this Opinion and the necessity for and the amount of the penalty.

I do not agree with the Opinion wherein it finds that the ditch constructed by Stepan is not a "water of the State" (page 14). Section 3 of the Environmental Protection Act

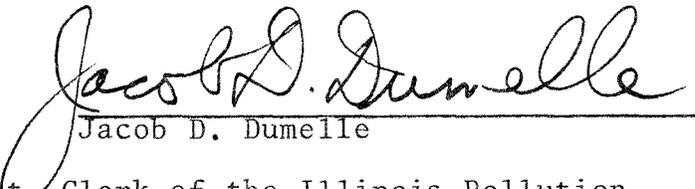
clearly delineates all "accumulations of water" in this category. The Board's Regulations exempt "sewers and treatment works" and thus is narrower than the statutory definition.

Is the ditch then a "sewer" or a "treatment works"? There is no showing that treatment takes place in the ditch. We could then consider it as an outfall sewer, albeit an open sewer. However, since access to the ditch is possible by the public (and presumably by wildlife) I would require it to meet water quality standards for protection of the public and wildlife.

Thus, to me, the ultimate distinguishing point of difference as to whether a ditch must meet water quality standards (is a "water of the State") or is a "sewer" is access. If access is restricted, as in Allied Chemical v. EPA, (PCB 73-382) then the outfall ditch merely becomes a means of conveying an effluent to a receiving stream. Presumably, effluent standards and mixing zone regulations will prevent harm to that receiving stream at the point of juncture.

The Chicago area has miles of artificial waterways including the Sanitary and Ship Canal, the North Shore Channel and the Cal-Sag Channel. These are truly artificial "ditches" but we certainly regulate and protect them from pollution. They are accessible to the public and must be protected in the interest of public health.

Thus, I do not agree with the Opinion's assertion that a publicly accessible ditch in which effluent flows is not protected by the Rules and Regulations of the Board.

  
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Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Concurring Opinion was submitted on the 25<sup>th</sup> day of February, 1975.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board