ILLINOIS POLLUTION CONTROL BOARD
June 15, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 70-49
KOPPERS COMPANY	)	

Dissenting opinion (by Mr. Dumelle)

I disagree with the 4-1 majority opinion in this case and feel that a substantial fine, as much as $5,600., should have been levied upon the Koppers Company.

On the record the Koppers Company would have known of its high discharges of phenol at the latest after the December 9, 1969 sampling of 3,900 parts per billion (ppb) which is 19.5 times the permit level of 200 ppb. Yet on January 19, 1970 a discharge of 210 ppm (1050 times the permit level) was recorded followed by an 11,000 ppb discharge (55 times the permit level) on February 2, 1970 and 8,000 ppb (40 times the permit level) on February 9, 1970.

The majority in this case relies upon the last sentence in its opinion, "The Agency cannot rely upon the respondent to prove its case" and has proceeded to verbally spank the Agency for a weak prosecution of the case.

There is an obligation in this case which rests upon Koppers which was not met and which deserves a fine to be assessed. Koppers had an obligation which the majority states "...to sample its effluent and to take action as soon as it discovered that its existing facilities were inadequate." I find it significant that Koppers did not introduce any effluent data into the record. Perhaps the Agency should have requested these effluent records if only to show their evident absence. An "experimental facility" must by definition be monitored. How else is one to know if the "experiment" is working? This Koppers did not do.

The usual argument of lack of technical competence cannot be used here as a defense by Koppers. Koppers is a great national corporation; the May 1971 issue of FORTUNE lists it as the 209th largest in the United States with annual sales of $532,841,000 and with 15,490 employes. It certainly had the technical competence to monitor its "experimental" permit. And it had an obligation, as a major participant in the free enterprise system, not to inflict its wastes upon the environment through deliverate overloading the waste treatment facilities, which the majority concedes was done. If we may paraphrase a late President of the United States, "The business of America is not business - it is the protection of the public interest."

One last argument can be made that we ought not to find Koppers guilty on its own testimony. But Koppers did testify and those are the hazards of testimony under oath. One can choose to remain silent. In the case of EPA v. C.E. Koons, PCB 71-30, (June 9, 1971) this Board by a 3-0 vote assessed a $100 fine upon a 77-year-old man operating a sanitary landfill and the fine was based in part upon the concession as to the violations by the respondent.

In this case, a multi-million dollar corporation has not monitored when under obligation to do so; has discharged phenols, a toxic chemical, at concentrations up to 1,050 times its permit level; and has admitted overloading its waste treatment facility by 500% (60,000 gallons per day compared to a design rate of 10,000 gallons per day). These transgressions should have been punished with a $5,000. fine for violating the Act and $200 for each of the three excessive effluents recorded after the December 9, 1969 incident, for a total of $5,600.

Jacob D. Dumelle