

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1990

IN THE MATTER OF:)
)
LIMITS TO VOLATILITY) R88-30(B)
OF GASOLINE) (Rulemaking)

CONCURRING OPINION (by J. Anderson):

I concur because the record indicates that we could be creating a disproportionate hardship on the retail stations and other-end users as distinct from the rest of the distribution network. This is due to the Order setting one start-up compliance deadline for both groups. I believe it would have been more appropriate for the Board to have set a later deadline for the end-users, for the same reasons expressed as follows by the USEPA in providing such a later deadline in its regulations:


However, the Federal regulation makes a distinction between retail stations and other end-users and the rest of the distribution network. Enforcement is delayed until June 1 for retail stations and other end-users to prevent outlets with slower turnovers from needing advance supplies of RVP controlled gasoline from suppliers over which they often have little control. The Board may wish to incorporate this distinction in its regulation to make it consistent with the Federal rule and to eliminate any potential hardship for end-users. (P.C.#71, p.1)

The USEPA set up the 1992 RVP control start-up at May 1, with delayed enforcement for the end-users until June 1, as noted above. The Board, however, set up its 1991 RVP control phase-in at June 1 for both groups, thus giving the distribution network a one month phase-in grace period for 1991, but leaving the end-users with no phase-in grace period at all. The USEPA obviously recognized not only the potential hardship, but also, implicitly, the enforcability problems of a simultaneous phase-in. I believe we should have done likewise, and particularly so because Illinois is "going it alone" in 1991, as opposed to the whole country coming under the federal umbrella in 1992. Also, the record indicates that giving a one month grace period in 1991 until July 1, from a practical marketing distribution standpoint end-users will not affect the June ozone picture all that much. The large quantity end users will get their supplies in a timely manner in either phase-in setting. However, those gas stations with little control over their suppliers will either be unable to comply with the June 1st deadline or will singularly be placed in a poor competitive situation, assuming in the latter instance

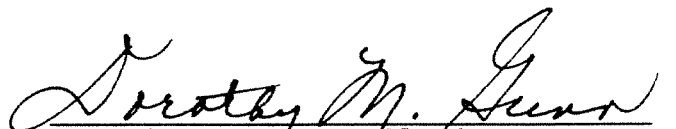
that they are indeed able to get advance supplies. I don't think it is realistic to argue that these small operations could get their problem addressed by seeking variance relief, nor does this approach lead to real ozone reduction benefits in any event.

As a second observation, it seems to me that lowering the psi RVP in Illinois from this year's 9.5 to 9.0 next year is misleading insofar as appearing to drop the volatility limit by 0.5 psi RVP, which is not the case. This year's 9.5 limit in Illinois was an absolute limit. Since there were no testing tolerance or other variability leeways before enforcement, the applicable and enforceable standard were the same, 9.5 psi RVP. As a result, the record shows that the gasoline distributed this year reflected a "play it safe" factor; it was, with rare exception, actually at 9.0 or less psi RVP. However, the Board in 1991 and the USEPA in 1992 have added a testing tolerance of 0.3 psi RVP to the 9.0 standard. This means that they will not enforce unless they test at greater than 9.3 psi RVP, as long as the regulated person's measurements are no greater than 9.0. This suggests, admittedly imprecisely but arguably realistically, that those who this year already dropped to a "play it safe", 8.7 would not need to do more next year; those who this year dropped to 9.0 would need only to drop further next year by 0.3, not by 0.5, psi RVP. Also, from an enforcement perspective, I believe that it usually is far more effective not to make distinctions between a standard as applied and as enforced. It would appear here that a similar result, the 9.0 limit, would have been achieved by setting the standard as an absolute limit, perhaps at 9.3 or 9.2 psi RVP, and let the "play it safe" factor again "take hold". On balance, however, I recognize the benefits of staying compatible with the USEPA approach, in spite of my concerns over its standard-setting methods.

For these reasons I respectfully concur.


Joan G. Anderson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 13th day of November, 1990.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board