

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 82-154
)
CITY OF MOLINE,)
)
Respondent.)

DISSENTING OPINION (by J. D. Dumelle):

The penalty in this case is too high and should have been in the \$50,000 to \$55,000 range or less. There are three reasons for this judgment; the lack of consequential harm from Moline's actions, the reliance upon federal grant funding, and the lack of administrative followup by the Illinois Environmental Protection Agency.

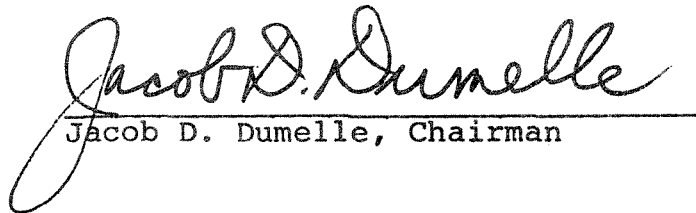
When a penalty is assessed the consequences of the action being penalized must be weighed. There were no fish kills, and no threat to public health. A large part of the sludge discharged was simply Mississippi River sediment removed at the water treatment plant and routed to the sewage treatment plant since March 1979. The Board can take notice of its own holding on March 8, 1984 in R82-3 in which the Alton Water Company was allowed to discharge its sediment indefinitely to the same Mississippi River. No environmental harm was found by the Board in the Alton rulemaking.

Moline is a city of 46,278. The expenditure of \$60,000 for a truck is a major cost item for a city of this size. It is quite understandable that Moline would try to include the truck in the grant so as to get 75% federal funding for it. Shortly after grant funding was denied, Moline bought the truck. Thus I would completely discount violations which occurred prior to January 1980, the date when the truck was purchased. Following this purchase, Moline met with the IEPA in September 1980 and asked for grant funding on another truck (R. 200). It was felt that any expenditures could jeopardize the entire facilities plan (R. 203). This funding was pending during 1980 and 1981. No suit was filed by IEPA during this period. No reason is given by IEPA for the delay until February 1982 in a decision on the inclusion of the second truck in the grant.

The lack of administrative followup by IEPA undoubtedly

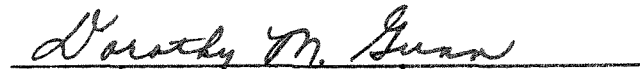
lulled Moline into thinking the excessive sludge discharges to be of little consequence. The majority opinion lists visits by IEPA personnel on an approximate six month interval, December, 1978; June, 1979 (four visits); December, 1979; June, 1980 (two visits); July, 1981; November, 1981; etc. (Opinion, p. 9). Why did IEPA not visit the plant monthly? Why was the suit filed more than three years after the violations were first detected? The violations are real but IEPA's inordinate slowness in pressing for cessation had to be a factor in Moline's actions.

I find nothing in this record to indicate that Moline deliberately set out to violate this Board's rules. Municipal officials expect their citizens to obey city ordinances and themselves try to obey state and federal rules or laws. The "punishment should fit the crime". In this case the punishment is much too severe in light of the factors discussed above.



 Jacob D. Dumelle, Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was filed on the 7th day of September, 1984.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board