

ILLINOIS POLLUTION CONTROL BOARD  
March 8, 1990

CITIZEN UTILITIES COMPANY	)	
OF ILLINOIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 88-151
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

DISSENTING OPINION (by R. C. Flemal):

I believe that the requested variance in this matter should have been granted. Citizens has made the requisite showing that denial of variance would constitute an arbitrary or unreasonable hardship:

- 1) Citizens has shown that substantial hardship would be incurred if immediate compliance is required.
- 2) The hardship cannot be said to be self-imposed, notwithstanding Citizens questionable lack of forthrightness regarding certain peripheral matters.
- 3) There is no dispute that significant health risk would not be incurred by the persons who are served by any new water main extensions, assuming compliance is timely forthcoming.

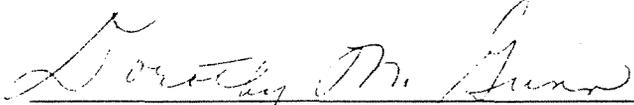
Citizens has thereby demonstrated that the hardship resulting from denial of variance would outweigh the injury of the public from grant of the petition, consistent with the standard articulated in Caterpillar Tractor Co. V. IPCB (48 Ill.App.3d 655, 363 N.E.2d 419, 1977).

Moreover, Citizens provides a firm commitment to compliance by tenable means and reasonable dates certain, consistent with Monsanto Co. v. IPCB (67 Ill.2d 276, 367 N.E.2d 684, 1977).



Ronald C. Flemal  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 26<sup>th</sup> day of March, 1990.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board