

ILLINOIS POLLUTION CONTROL BOARD
January 19, 1989

VINCENT A. KOERS, and DANVILLE)
CITIZENS FOR CONTROL OF)
HAZARDOUS WASTE INJECTION,)
)
Petitioners,)
)
v.) PCB 88-163
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
ALLIED-SIGNAL, INC.,)
)
Respondents.)

CONCURRING OPINION (by B. Forcade):

I agree with the majority that a third-party appeal of this permit is not authorized by law. However, I believe the alleged problems raised by the petition are issues that this Board may properly address if they are filed as a complaint, rather than as a third-party permit appeal.

In Landfill Inc. v. PCB, 387 N.E.2d 258 (1978), the Supreme Court stated:

Section 31(b) authorizes citizen complaints against alleged violators of the Act, any Board rule or regulation, or Agency permit; it requires the Board to hold a hearing on all such complaints which are not "duplicitous or frivolous" (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 1031(b)). At that hearing, the complainant bears the burden of showing actual or threatened pollution or actual or threatened violations of any provisions of the Act, rules, regulations, or permits. (Ill. Rev. Stat. 1975, ch. 111 1/1, par. 1031(c).) The grant of a permit does not insulate violators of the Act or give them a license to pollute; however, a citizen's statutory remedy is a new complaint against the polluter, not an action before the Board challenging the Agency's performance of its statutory duties in issuing a permit. As the principal draftsman of the Act has noted, "One receiving a permit for an activity that allegedly violates the law can be charged with causing or threatening to cause such violation in a citizen complaint

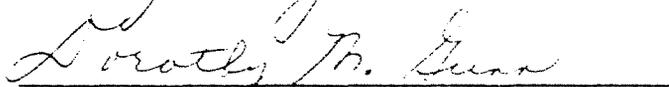
under Section 31(b), and the regulations expressly provide that the existence of a permit is no defense to such a complaint." Currie, Enforcement Under Illinois Pollution Law, 70 Nw.U.L.Rev. 389, 478 (1975).

In Koers' petition for hearing many of the "causes" appear premised on claims that Allied's proposed operation under the terms of the permit would violate statutory or regulatory provisions. Under Landfill Inc., such claims can be validly reviewed if the document making those claims is captioned "complaint," rather than "third-party permit appeal."

For these reasons, I concur.


Bill S. Forcade, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 27th day of January, 1989.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board