

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 1982

BROWNING FERRIS INDUSTRIES OF )  
ILLINOIS, INC., )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 82-101  
 )  
LAKE COUNTY BOARD OF SUPERVISORS, )  
 )  
 ) Respondent, )  
 )  
 ) and )  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Intervenor - Petitioner. )

DISSENTING OPINION (by J.D. Dumelle):

My reason for dissenting lies in the failure by the majority to allow Condition "E". Before discussing that point I do wish to agree with the majority in here allowing Lake County to place conditions to accompany the site location approval. These approval matters are not always unilateral acceptances or rejections. The acceptance here by the Board majority of reasonable conditions will do a great deal in making the site location approval process much more workable and acceptable to the public and to the local governments involved.

I agree that Condition "X" ought not to be allowed. This clause would require enforcement by IEPA. Since the enforcement would probably be brought before the Board by the IEPA, an unfortunate situation would develop were Condition "X" to be allowed. The Board would be judging violations of conditions it had already seen (in an appeal such as this) and had presumably ratified by its earlier failure to strike. How then could the Board be unbiased in judging anew the reasonableness or need for that condition? Because of these quasi-judicial complications, I agree that Condition "X" should not be approved.

The majority makes a distinction in its Opinion between "inspection" (or information-gathering) conditions and "regulatory" (or action) type conditions. It upheld Conditions G and H to "discuss and recommend" and amended the words "may require" to "recommend" in the latter.

Before "recommendations" can be made, the County must have information. The majority, in striking Condition "E" denies to the County the inspection of special waste manifests and also the right to test wastes for verification. Yet in Board discussion no one objected to County inspection of the special waste manifests. Condition "E", as a minimum, could have been amended to at least allow inspection of the manifests.

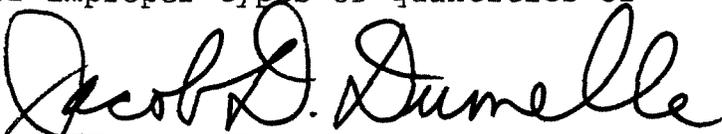
Let us review a key criterion in the Act. It reads as follows:

the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected [Section 39.2(a)(2)] (emphasis added).

The operation of a special wastes landfill can imperil public health. Certain organic solvents such as acetone, toluene and xylene are known to make clay layers more permeable and thus easier for leachate passage to water supply aquifers. Inspection of manifest documents to verify the important liquid: solid ratio is a method of insuring the public health and safety. This power was denied by the rejection of Condition "E".

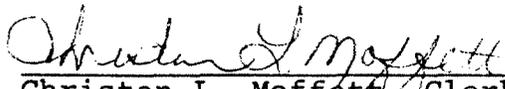
Beyond inspection of manifests comes the verification of substances disposed. How is mislabelling to be detected? It can only be found by chemical testing. The remainder of Condition "E" would have allowed Lake County to take samples for its own testing. What is the harm in doing this? The procedure would keep the site operator and the hauler on their toes. The IEPA, strapped for funds, cannot do more than a token effort in this regard.

I would have allowed Condition "E" in full so long as disposal operations were not seriously slowed by sample taking. Lake County should be allowed to protect its citizens and its aquifers from the disposal of improper types or quantities of special wastes.



Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 3<sup>rd</sup> day of December, 1982.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board