

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1980


CATERPILLAR TRACTOR COMPANY,)
)
 Petitioner,)
)
 v.) PCB 80-3
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by I. Goodman):

The majority of the Board today reconsidered its Order herein of May 1, 1980 and, receiving no response from the Illinois Environmental Protection Agency concerning Petitioner's motion for reconsideration of that Order, granted limited relief as requested in the motion for reconsideration. Although I do not agree that the Board should grant even limited relief based upon the fact that the Agency did not respond to the motion, it is the dicta contained in the first paragraph of today's Order which forces this dissent.

The Board today withdrew the Order of May 1, 1980, stating "... that its previous Order may be in conflict with its Opinion and Order of May 1, 1980 in Peabody Coal Company v. EPA, PCB 78-296". It is my opinion that the problem presented by the Caterpillar petition cannot fit into the neat cubby holes as dictated by Peabody. It is clear to me that the carefully defined rule of Peabody is unable to subsume the wide-ranging problems the Board must face in future NPDES permit condition appeals. I urge the Board to develop a more flexible attitude toward such appeals in deciding future petitions.

I must therefore respectfully dissent from today's Order herein.



Irvin G. Goodman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted to me on the 14th day of July, 1980.



Christan L. Moffett, Clerk
Illinois Pollution Control Board