

ILLINOIS POLLUTION CONTROL BOARD
March 21, 1996

SPILL, MADISON COUNTY,)
CONSERVATION ALLIANCE, SIERRA)
CLUB, NAMEOKI TOWNSHIP CLERK)
HELEN HAWKINS, KATHY ANDRIA,)
SHIRLEY CRAIN, GLENDA FULKERSON,))
JOHN GALL, THELMA ORR, RON SHAW,))
AND PEARL STOGSDILL,)

Petitioners,)

v.)

CITY OF MADISON, AND METRO-EAST,)
LLC,)

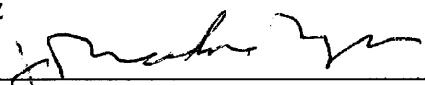
Respondents.)

PCB 96-91
(Pollution Control Facility Siting
Appeal)

CONCURRING OPINION (by J. Theodore Meyer):

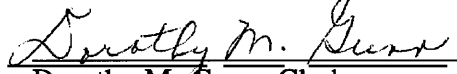
I agree with the majority that the doctrine of fundamental fairness under Section 40.1 of the Act requires that procedures at the local level comport with due process standards such that an individual's interest is weighed against society's interest in effective and efficient governmental operation. (Industrial Fuels & Resources/Illinois, Inc. v. IPCB, 227 Ill. App.3d 533, 592 N.E.2d 148 (1st Dist. 1992); Waste Management of Illinois, Inc. v. IPCB, 175 Ill. App.3d 1023, 530 N.E.2d 682 (2d Dist. 1989).) While serving as state representative, I was Chairman of the House Environmental Committee, Co-chairman of the Conference Committee, presenter of the Conference Committee's report and House sponsor of the bill on hazardous waste which covered matters regarding local siting approval. *Ex parte* contacts, such as the trip taken by aldermen of the City of Madison, are a proper element to consider in assessing fundamental fairness.

In this case the City of Madison, not the operator, initiated, arranged and paid for the trip to Michigan to observe other waste wood burning facilities owned by the operator. It was the City of Madison's decision not to include opponents to the facility on the trip, nor allow opponents to question those that went on the trip during the 30-day comment period. The operator was not involved at all and should not be punished for actions over which it had no control. As such, I concur in this matter to insist that this decision not influence future cases where an operator does not participate or control trips taken by the local decision maker to any of its other facilities.

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J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 27th day of March, 1996.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board