

ILLINOIS POLLUTION CONTROL BOARD

August 30 1971

Environmental Protection Agency)

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v.

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PCB 71-32

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Oscar E. Denny, d/b/a

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D. & S. Landfill

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Robert F. Kaucher for Environmental Protection Agency

Ted Harvey for Oscar E. Denny

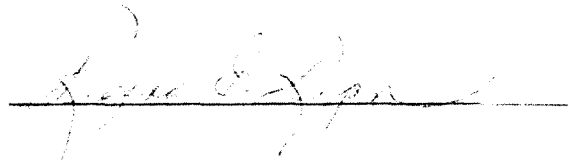
Concurring Opinion by Mr. Kissel:

I agree with all of the conclusions of the majority of the Board in this case, except the one that finds no violation or infraction by Denny resulting from the leachate running off into the surface water. As the opinion of the Board points out, there was ample evidence that leachate from this refuse landfill was running from the ground surface into water impounded on the site. The Board opinion finds that "no infraction" has occurred as a result of this run off because "there is insufficient proof that any water escaping from this impoundment would be likely to contaminate ground waters or streams." I disagree with the Board's opinion in that I do not believe that it would be necessary for the Agency to prove initially that there was contamination of waters or streams where leachate is coming from a garbage landfill operation. It would be my view that water run off from a garbage operation could be presumed to be harmful to the stream, and that in any case where the Agency proved that leachate was running off into the waters of the State, the burden would shift to the landfill operator to prove that the leachate was not causing any contamination of the water into which the leachate was running. It would seem that we

could presume that water coming from a garbage dump to the waters of Illinois is harmful without putting the Agency to the task of sampling the waterway in each one of these cases.

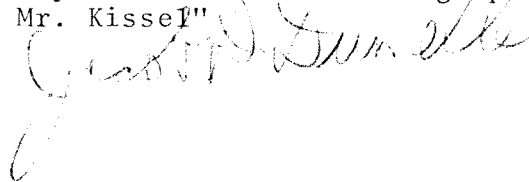
I would therefore find the Respondent guilty of water pollution.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that Mr. Richard J. Kissel submitted the above opinion on the 30 day of August, 1971.



A handwritten signature in cursive script, appearing to read "Regina E. Ryan", is written above a horizontal line.

"I join in this concurring opinion with Mr. Kissel"



A handwritten signature in cursive script, appearing to read "George W. Dunbar", is written below the text.