

ILLINOIS POLLUTION CONTROL BOARD
March 3, 1994

PERMA-TREAT OF ILLINOIS, INC.,)
)
Petitioner,)
)
v.) PCB 93-159
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

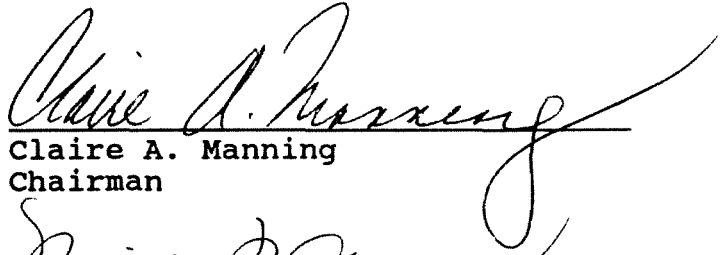
DISSENTING OPINION (by C. A. Manning & M. McFawn):

On January 24, 1994, the Illinois Environmental Protection Agency (Agency) filed a motion for reconsideration of the Board's Opinion and Order in this case adopted on December 16, 1993, wherein the majority of the Board found in favor of the petitioner, Perma-Treat of Illinois, Inc. (Petitioner). Petitioner filed its response on February 7, 1994. For the reasons set out below, we would grant the motion for reconsideration.

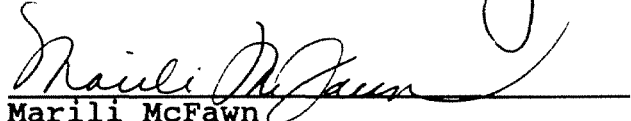
In its motion, the Agency addressed at length the applicability of the "manufacturing" exemption raised by the majority in support of its order deleting the permit conditions contested by petitioner. That exemption, found at 35 Ill. Adm. Code 721.104, originated in the majority's opinion. Neither of the parties raised this argument in their briefs or at hearing, and neither party had opportunity to previously state their position on its correct application to the set of facts before the Board. Therefore, we would grant the Agency's motion and, at the least, respond to their arguments concerning its applicability.

Upon consideration of the Agency's arguments, we reiterate finding that the waste pile is subject to RCRA clean closure requirements. We note that we did not squarely address whether the waste pile was exempt under Section 721.104, but rather examined that section's applicability to CCA released from the waste pile. Upon reconsideration, we clarify that we agree with the Agency argument that the waste pile is not in any part exempt from RCRA closure requirements. By its very definition on functions, the waste pile, including the drip pad at its base, cannot be considered as part of the manufacturing process or a non-waste treatment manufacturing unit and thereby exempt pursuant to Section 721.104(c).

For these reasons, we would grant the Agency its motion for reconsideration and address the new arguments about the applicability of the Section 721.104.

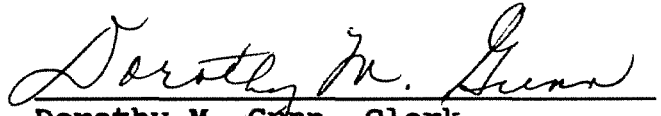


Claire A. Manning
Chairman



Marili McFawn
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 4th day of March, 1994.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board