

ILLINOIS POLLUTION CONTROL BOARD

April 6, 2000

LAND AND LAKES COMPANY,)
)
 Petitioner,)
)
 v.) PCB 99-69
) (Pollution Control Facility Siting Appeal)
 RANDOLPH COUNTY BOARD OF)
 COMMISSIONERS,)
)
 Respondent.

DISSENTING OPINION (by M. McFawn):

Before the Board are two opposing motions for summary judgment on whether this landfill siting proceeding was fundamentally fair. Both parties agree that there is no genuine issue of fact remaining. Both parties rely on the same discovery depositions to support their respective motions. Both parties fully briefed the law applicable to and supportive of their respective motions. Finally, each party argued that, there being no genuine issue of a fact, it is entitled to summary judgment as a matter of law. Yet, the majority summarily denied both motions for summary judgment. The majority did not identify any outstanding issue of fact when it denied both motions; it merely sent this matter to hearing.

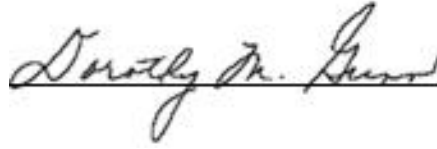
I disagree with the majority's decision not to resolve the pending motions for summary judgment. Both parties want us to resolve this question based upon the facts and law now before us. More importantly, the motions are properly before us for decision on their merits. After examining that record, including the discovery depositions the parties both offer in support of their respective motions, I found no remaining issue of fact. Notably, neither did the majority. Since no question of material fact exists, the questions which remain are legal and must be resolved by applying the law to the facts in this case. Nothing impedes us from engaging in that exercise now.

Through their motions for summary judgment, the parties have sought to resolve this issue (and possibly the entire case) in an efficient and legally correct manner. They should not be required to proceed to hearing absent any rationale for denying summary judgment. I believe that we are obligated as a judicial body to address their motions and afford them the relief they seek through summary judgment.



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 10th day of April 2000 .

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board