

ILLINOIS POLLUTION CONTROL BOARD  
April 9, 1992

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 91-255
	)	(Enforcement)
SEARS, ROEBUCK and COMPANY,	)	
a New York corporation	)	
	)	
Respondent.	)	

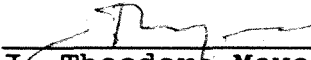
DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation in this case.

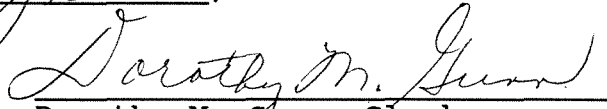
Although the proposed settlement agreement states that respondent's noncompliance was economically beneficial in that it operated its unpermitted equipment for five years, and avoided \$450 in payments for annual permit fees for that five year period, there is no further information on the amount of that economic benefit. Section 42(h)(3) of the Environmental Protection Act specifically requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the complete amount of the economic benefit. For example, what costs were avoided by being able to operate the equipment without waiting until the permits were applied for and obtained? Without more specific information, it is impossible to know if the penalty of \$4,000 comes close to any savings realized by respondent.

Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against respondent. (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f).) I am pleased that the Attorney General is bringing enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at an absolute minimum, recognize that the Board could award costs and reasonable fees.

For these reasons, I dissent.

  
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J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 10<sup>th</sup> day of April, 1992.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board