

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1990

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 90-88
	)	(Enforcement)
ELDON SWEDBERG, d/b/a ELDON	)	
SWEDBERG SWINE FARM,	)	
	)	
Respondent.	)	

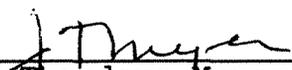
DISSENTING OPINION (by J. Theodore Meyer):

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

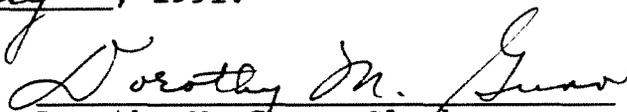
I believe that the settlement agreement is inadequate. There is no assessment of any economic benefit accrued by respondent because of its delay in compliance with pollution control requirements. Section 33(c) of the Environmental Protection Act requires the Board to consider all facts and circumstances of the action involved, and specifically sets forth six factors. The settlement agreement does set forth the factors in new Section 42(h)(3) (P.A. 86-1363, effective September 7, 1990), which includes consideration of economic benefits, but does not address that factor. Because the record in this proceeding is utterly bare of any evidence on the economic benefit factor, the Board was unable to undertake even the most cursory review of the appropriateness of the penalty agreed upon by the parties. It is impossible to know if the penalty of \$4,000 even comes close to the 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 beginning to bring enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at a 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 4<sup>th</sup> day of January, 1991.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board