ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 88-199
	)	(Enforcement)
SEEGERS GRAIN, INC.	)	
	)	
Respondent.	)	

DISSENTING OPINION (by J. Anderson and J. Dumelle):

This case certainly underscores the wisdom of the requirement in the Board's procedural rules that a settlement proposal be signed prior to presentation at hearing. The Board has, possibly unfortunately, gotten into the habit of accepting hearing records containing agreements which were not signed until after they were presented at hearing. At least, though, there was no substantive post-hearing change in the agreement in those instances.

In this case, however, there was a highly substantive post-hearing change in the signed agreement; the penalty was cut in half from that presented at hearing. It then became worse. In response to a Board inquiry about this, the Complainant requested that decision be deferred for 30 days because of other inconsistencies and the need to amend the settlement. The Respondent objected. The Board granted the 30 days, which elapsed without further response. It seems apparent that the Board was receiving little enlightenment. Nevertheless, the Board then proceeded to accept the signed version of the settlement. The majority of the Board asserted that its decision was based on its conclusion that the executed settlement set forth "a full stipulation of all material facts pertaining to the nature, operations and circumstances surrounding the claimed violations", that the agreement was freely signed, and neither party requested relief from its terms.

We do find the Board's conclusion somewhat ironic. What is distressing, however, in our opinion, was that the Board put its imprimatur not only on a violation of the letter of its procedural rules, but on the spirit as well; the majority accepted the notion that it is perfectly all right to present one version of an agreement, and a tentative one at that, at the public hearing, and then present a different agreement later directly to the Board. By accepting the latter agreement, the Board was essentially allowing the act of signing an agreement to supersede the requirement that it be presented at hearing. We note that the majority didn't even rely for their decision on the

fact that no members of the public were present at the earlier hearing.

This proceeding should have been sent back to hearing, certainly at this juncture, if not earlier (see J. Anderson dissent of May 10, 1990). We believe that the agreement was improperly before the Board. In environmental enforcement proceedings, the public has always had a right to testify at hearings. It is especially important that this right be carefully preserved when a stipulated settlement is being presented. The record for the Board's review is limited in this setting, and the Board needs to know if there are aspects of the proposed agreement with which the public disagrees, and why. It might not occur often, but it does occur. And in this instance, we cannot assume that, because no public was present at the first settlement hearing, it would not show up at the second, particularly if it became aware of the fact that the penalty was cut in half.

Generally speaking, the danger in not sticking to the established procedures in presenting settlement proposals is that the public at best could lose confidence in the process, and at worst could come to believe that it was being subjected to a kind of "bait and switch" scenario.

It is for these reasons that we respectfully dissent.

Joan G. Anderson

J. D. Dumelle

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 July, 1990.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board