

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1990

ILLINOIS ENVIRONEMNTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 90-64
)	(Enforcement)
JEFFREY KILGUS, d/b/a INDIAN)	
CREEK MATERIALS COMPANY,)	
)	
Respondent.)	


DISSENTING OPINION (by J. Theodore Meyer):

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

Neither the Illinois Environmental Protection Agency (Agency) nor the Attorney General have articulated any standards as to what factors should be considered when negotiating a fine to be imposed pursuant to a settlement agreement. Additionally, although the proposed settlement agreement states that Kilgas' noncompliance was economically beneficial in that he operated the unpermitted mining facility without the delay of applying to and waiting for the Agency to issue permits, there is not any specific information on the amount of that economic benefit. Section 33(c) 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 amount of the economic benefit, not just a statement that that an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$3,500 even comes close to any savings realized by Kilgas.

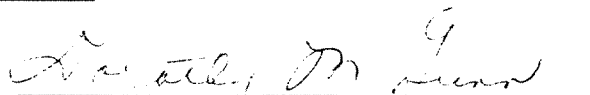
Finally, I am frustrated that this case was not brought in the name of the people of the State of Illinois. If it had been, costs and fees could have been assessed against Kilgas. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f).

For these reasons, I dissent.



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 19th day of July, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board