

ILLINOIS POLLUTION CONTROL BOARD  
October 11, 1990

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 90-109
	)	(Enforcement)
LITHO-GRAPHIC METAL CORPORATION,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	


DISSENTING OPINION (by J. Theodore Meyer):

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

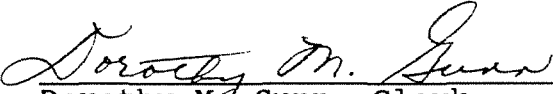
Although the proposed settlement agreement states that respondent's noncompliance was economically beneficial in that it operated its unpermitted equipment without the delay of applying to and waiting for the Agency to issue permits, there is not any specific information on the amount of that economic benefit. Additionally, there is no mention of any economic benefit realized by respondent's use of coatings which violated the standards of 35 Ill.Adm.Code 215.104, and which emitted excess VOCs into the atmosphere. Section 33(c) of the Environmental Protection Act (and new Section 42(h)(3), as contained in P.A. 86-1363, effective September 7, 1990) 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 full economic benefit, not just a statement that an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$3,000 even 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 find this omission particularly grievous in this case, because the stipulation specifically states that respondent "knowingly and willfully" constructed and operated its equipment without the necessary permits. 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 15<sup>th</sup> day of October, 1990.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board