

ILLINOIS POLLUTION CONTROL BOARD
February 8, 1990

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R90-8
105.102; REPEAL OF DE NOVO) (Rulemaking)
HEARINGS FOR APPEALS OF NPDES)
PERMITS)

DISSENTING OPINION (by J. Anderson):

The stated purpose of separating out this rulemaking from the general procedural rules update effort was to repeal the existing de novo language regarding NPDES permit appeals. I fully support raising this issue at this time. The proposed language, however, also deletes the burden of proof language in that subsection and proposes new language. I believe that it is unwise to raise this important issue only in the context of NPDES permits. The opinion itself creates confusion as to the intended effect of this language on other permits.

The Opinion first states:

"The Board's intention in this proceeding is to make the NPDES appeal process function in the same manner as the appeal of all other Agency issued permits."

The Opinion then states:

"Today's proceeding is not intended to make any changes in the manner in which other non-NPDES permit appeal proceedings are conducted."

The Opinion also states:

"This language, as well as the burden of proof language, is found with minor semantic differences in Section 40(b), (c), and (d) of the Act governing permit appeals."

Section 40(b) addresses third party RCRA appeals; Section 40(c) references Section 39.3 which is essentially inoperative; and Section 40(c) addresses air permits.

I believe that the burden of proof language does, in fact, affect non-NPDES permits and, at the very least, should have been

