

ILLINOIS POLLUTION CONTROL BOARD  
February 22, 1990

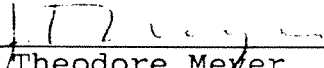
NATIONAL ENVIRONMENTAL SERVICES CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 89-129
	)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

DISSENTING OPINION (by J. Theodore Meyer):


I dissent from the order issued by the majority today, in which they note that petitioner's brief is over one month late, and state that because of the decision deadline in this case, the filing of a brief would now be "inappropriate" unless accompanied by a waiver of the decision deadline. I object to this for several reasons. First, I do not believe that the Board should begin the dangerous precedent of issuing an order reminding a petitioner to file a brief in every case where the brief is appreciably late. If the Board issues such an order in this case, why not in every case? This will only increase the paper generated by the Board and result in delay. Persons appearing before the Board should be expected to meet their deadlines without prompting from the Board. Second, I believe that the majority's order implies that the Board will accept late briefs if accompanied by a waiver of any decision deadline. I can easily foresee situations where the Board would decide not to accept a late brief at all, regardless of whether it was accompanied by a waiver. Third, I believe that the majority's order in essence forces the petitioner to give a waiver of the deadline. The petitioner controls the clock in these cases, and should not be coerced into extending the time for decision.

Finally, I object to the last paragraph of the majority's order, which states that if petitioner does not file a waiver and motion by March 6, 1990, the Board will dismiss the appeal on its own motion. I question whether dismissal is an appropriate remedy in this situation. Perhaps the better remedy is to refuse to consider any brief which is now filed by petitioner, and decide the case simply on the record as it now exists before us. I do not believe that a petitioner is necessarily always required to file a brief before the Board will rule on the merits of the appeal, although of course a petitioner's claims may be weak unless supported by specific argument and citation to the record. In any event, I believe that it is premature to state that the case will absolutely be dismissed if a waiver and motion are not filed.

For these reasons, I dissent.

  
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J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, hereby certify that the above Dissenting  
Opinion was filed on the 3rd day of February, 1990.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board