

ILLINOIS POLLUTION CONTROL BOARD
February 2, 1989

McLEAN COUNTY DISPOSAL)
SERVICE, INC.,)
)
Petitioner,)
)
v.) PCB 88-195
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

DISSENTING OPINION (by J. Marlin):

Given the circumstances of this case, I must disagree with the majority's dismissal of this matter. I believe that the proper course of action, given the available alternatives, is to move forward with the instant permit appeal proceeding.

The facts in this matter are undisputed. The Fourth District's decision in Citizens Against the Randolph Landfill (CARL) v. Pollution Control Board, No. 4-88-0247 & 4-88-0251 cons., December 28, 1988, reversed and remanded the Board's decision in PCB 87-133 which had held that McLean County Disposal Service, Inc. (MCD) application for site location suitability approval was granted by operation of law. The Fourth District has not issued a mandate for its December 28, 1988 decision. Neither the Board nor the Appellate Court has granted a stay of the Board's decision in PCB 87-133 pending the appeal of that decision. Section 39(c) of the Environmental Protection Act (Act) provides:

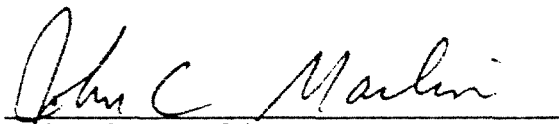
[N]o permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the said facility has been approved by the County Board...or governing body of the municipality....

The instant proceeding concerns the Agency's denial of MCD's application for a developmental permit. The statutory decision deadline for this matter is April 5, 1989. A hearing is scheduled for February 23, 1989. If the Board fails to decide this matter by April 5, 1989, MCD's permit request would be granted by operation of law pursuant to Section 40(a) of the Act.

Given these circumstances, I believe that the most prudent course of action for the Board would be to grant a stay of this instant permit appeal pending the issuance of a court mandate

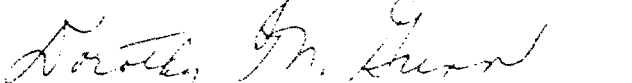
concerning the Board's decision in PCB 87-133. Such a tack would allow the judicious expediture of the Board's limited resources. Since the Agency may not grant a development permit without an applicant demonstrating that it has already received site location suitability approval, the Board would not need to make a decision on the merits of the instant appeal if the Board's decision in PCB 87-133 is overturned by a court and a mandate is issued. However, since a decision in this matter must be rendered by the Board by April 5, 1989, the Board effectively cannot grant a stay absent a waiver of the decision deadline by MCD. Because MCD has not granted any waiver and no mandate has issued, it appears to me that the only proper course of action is to proceed to a decision on the merits of the instant permit appeal.

For these reasons, I respectfully dissent.



 John C. Marlin
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the fifth day of February, 1989.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board