ILLINOIS POLLUTION CONTROL BOARD June 5, 1986

WHITE COUNTY BOARD,)
Petitioner,)
v.) PCB 85-174
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.))

DISSENTING OPINION (by J.D. Dumelle):

My dissent is based upon the overly broad interpretation of the majority in stating that a highway construction project can become "affected land" under the mine-related pollution regulations.

I voted for the original regulations on May 23, 1972 (R71-25, , 4 PCB 573-628). I do not recall any intent to regulate the use of mine waste used in highways. If a project were to come into being to construct say a levee with proper earth cover but using mine waste as its core would these rules apply? The majority here would say "yes."

But the purpose of these rules was to prevent the creation of large gob piles exposed to rain and air which generate sulfuric acid. A highway core or a levee core would not do this because of the earth cover that would be used over the mine waste. Thus, it seems to me that an overly broad interpretation of Board intent has been made.

Further, if the definitions are examined, the narrower intent becomes clear. The revision to the mine-related pollution rules was done in R76-20 and R77-10 on December 13, 1979 (37 PCB 49-80). The Opinion was enacted January 24, 1980 (37 PCB 211-260).

The definition of "Mining Activities" reads, "All activities on a facility which are directly in furtherance of mining, including activities before, during and after mining" 37 PCB 58. If the definition of "facility" (37 PCB 56) is inserted into the above, it then becomes, "All activities on a contiguous area of land (portion omitted) which are directly in furtherance of mining, including activities before, during and after mining."

The White County highway project is not "contiguous." Thus, it does not come under these rules.

My concern is that this overly-broad interpretation of Board intent will inhibit the useful use of mine refuse in Illinois.

For these reasons, I dissent.

acob D. Dumelle

Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 64 day of _______, 1986.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board