ILLINOIS POLLUTION CONTROL BOARD
February 20, 1985

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	PCB 82-144
CITY OF GALENA,	)	
Respondent.	)	

DISSENTING STATEMENT (by J. D. Dumelle):

The majority of the Board has examined the Environmental Protection Act. They have bootstrapped a legal requirement to publish an opinion containing "facts and reasons" via the Administrative Procedure Act into an assumed requirement for admission of violations.

Admittedly, the Environmental Protection Act is silent on settlement procedures (see majority order, p. 5). One must then look at legislative intent.

The courts have long held that "the legislative declaration of the purpose of the [Environmental Protection] Act (par. 1002) indicates that the principal reason for authorizing the imposition of civil penalties (par. 1042) was to provide a method to aid the enforcement of the Act and that the punitive considerations were secondary" (City of Monmouth v. Pollution Control Board (1974) 57 Ill. 2d 482, 490, 313 N.E. 2d 161, 166). I find no reason to conclude that compliance with the Act cannot be encouraged through settlements which do not allow for the finding of violation. A large penalty absent such a finding clearly would be a greater deterrent than a small penalty in conjunction with such a finding. Thus, the Board's "principal reason" for imposing a penalty is better met.

The Environmental Protection Act has as one of its goals the establishment of a specialized technical tribunal to adjudicate environmental disputes involving its own rules and the Act. That tribunal is this Pollution Control Board.

Implicit in establishing that tribunal is the power to accept (not "order") settlements freely arrived at by the parties. And if a party chooses to make a contribution or pay a penalty to an Illinois fund, why should the Board not accept it it if it appears reasonable? After the Board order has been issued accepting the stipulation, the penalty or contribution payment is really not "ordered." The word "order" merely shows the Board's official acceptance consistent with the stipulation.

The Attorney General of Illinois has brought this case on behalf of the IEPA. His office is also the lawyer for the Pollution Control Board. Obviously, his staff saw no legal impediment to approval by the Board of the stipulation here presented and now rejected by the majority.

Further, nothing prevents the Attorney General from entering into a contract with any person against whom he has brought an enforcement action agreeing to dismiss the proceeding upon a contribution to the Environmental Trust Fund. If the Attorney General were to take such a course, the same "settlement" could be reached but neither the Board nor the public would have any opportunity to look into that agreement in a public forum. Alternatively, as the majority acknowledges, the same settlement offered here could be accomplished before the court system. In either case, the Board loses the opportunity to oversee the settlement process.

If the Board is to fully operate as the state's specialized technical tribunal in environmental matters, it must have the power to accept all types of reasonable stipulations. My feeling is that it has always had that power.

For these reasons, I dissent.

Jacob D. Dumelle
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Statement was submitted on the 25th day of February, 1985.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control