

ILLINOIS POLLUTION CONTROL BOARD  
November 8, 1984

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-4  
 )  
CITY OF EAST MOLINE, )  
 )  
Respondent. )

DISSENTING OPINION (by J. D. Dumelle):

My dissent in this case is based upon the size of the penalty. I believe that \$30,000 is too severe a penalty and that \$15,000 or less would have been a fairer penalty. Also the operating permit revocation is in itself a severe penalty.

Violations were listed as far back as October 11, 1973. The complaint was not filed until January 7, 1983, some nine years later. It is this long-delayed enforcement which is troubling.

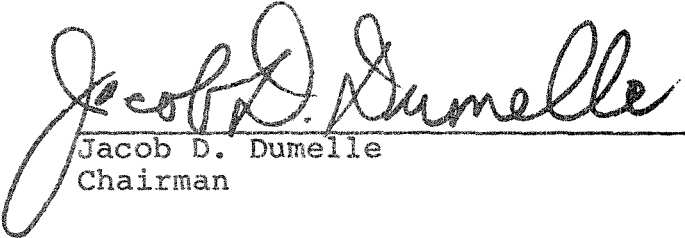
The IEPA inspected the landfill at least 62 times in the nine year period. But it was not until it had accumulated 46 violations on lack of daily cover that it filed the complaint.

The reason for the delay in enforcement is not given. To me, it is a form of entrapment to continue to cite a small city (population 20,907) time after time for nine years without enforcement. False signals are sent. City officials conclude that the inspection reports for prior violations are only warnings and are "forgiven" if enforcement is not reasonably prompt.


A second concern of mine is that due process is not served when violations from 1973 are litigated in 1983. Witnesses memories grow stale. Personnel change. Conversations are forgotten. The defense by the City may be severely weakened.

Enforcement ought to be prompt. Ideally, if prosecution is to come it ought to occur within three to four months of the violation. By then the IEPA should be reasonably certain that compliance is not occurring. But enforcement and resulting large

penalties nine years after violations are found is not fair to a small municipality.

  
\_\_\_\_\_  
Jacob 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 13<sup>th</sup> day of November, 1984.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board