

ILLINOIS POLLUTION CONTROL BOARD
July 21, 1982

CARGILL, INC.,)
)
 Petitioner,)
)
 v.) PCB 81-37
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by D. Anderson):

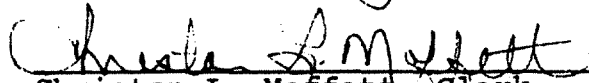
The Board's Opinion and Order of May 27, 1982 based the determination as to whether an NPDES permit is required of this discharge on the physical configuration of the system rather than the properties of the effluent: a process discharge is required to have a permit, but not a stormwater discharge. The Agency's motion does not accept this distinction. It continues to argue that a permit is required on the basis of contaminants appearing in the discharge.

The Opinion of May 27, 1982 contains legalistic arguments, but ignores the common sense aspect. In the first place, stormwater discharges generally contain contaminants in excess of the effluent standards set by Part IV (Part 304). In the second place, process discharges which meet the effluent standards must nonetheless have a permit. If the Agency's argument were accepted, that the presence of contaminants determines the permit requirement, then all storm sewers would be brought into the permit system, and process and municipal discharges with well-operated treatment works could surrender their permits. This would clearly be contrary to the intent of the permit system to regulate even well-operated treatment works and to exempt uncontrollable non-point source discharges.

The decision in this case turned on the lack of information connecting the discharge to the manufacturing process. For example, if the plant grounds were shown to be contaminated with fall-out from process sources, and that this was the source of the contaminants in the stormwater, then a permit would have been necessary. I would schedule a hearing to allow the parties to present evidence on whether the discharge is process or stormwater.


Donald B. Anderson, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Dissenting Opinion was filed on the 30th day of July, 1982.


Christan L. Moffett, Clerk
Illinois Pollution Control Board