

ILLINOIS POLLUTION CONTROL BOARD

July 22, 1999

KELLY-MAC PARTNERS,)	
an Illinois partnership,)	
)	
Complainant,)	
)	
v.)	PCB 99-162
)	(Enforcement - Citizens, UST)
ROBERTSON-CECO CORP.)	
a foreign corporation,)	
)	
Respondent.)	

DISSENTING OPINION (by R.C. Flemal):

I respectfully dissent from the majority's order delivered today because I believe that the Board does not have authority to grant reimbursement of the remediation costs allegedly incurred by the complainant.

The majority correctly notes in its opinion that the Board is a creature of statute, and accordingly has no authority except that expressly provided by statute. See Village of Lombard v. Pollution Control Board, 66 Ill. 2d 503, 363 N.E.2d 814, 6 Ill.Dec. 867 at 868 (1977), ("An administrative Agency, such as the Pollution Control Board, has no greater powers than those conferred upon it by the legislative enactment creating it.") For this reason the majority finds that the Board has no authority to award accrued interest costs in citizen enforcement actions because no statute authorizes the Board to make such awards.

This same reasoning needs to be applied to the larger issue of whether the Board has authority to even hear third-party cost recovery cases. Neither the Environmental Protection Act, nor any other statute grants such authority to the Board. Absent any explicit authority, no authority exists.

This matter should accordingly have been dismissed as frivolous, because the Board does not have the authority to grant the relief requested.

For this reason, I dissent.

Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the ____ day of _____, 1999.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board