

ILLINOIS POLLUTION CONTROL BOARD  
January 8, 1976

CITY OF JACKSONVILLE, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 75-390  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

CONCURRING OPINION (by Mr. Zeitlin):

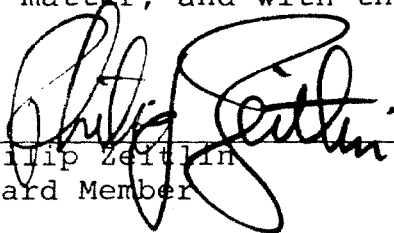
While I concur with the grant of this Variance, and generally with the conditions imposed on Petitioner, I cannot agree with the necessity for condition "d" of the Board's Order. I feel that the action of the Board in retaining jurisdiction on the matter of sludge removal from Mauvaise Terre Creek will serve merely to delay final adjudication of the matter at increased expense to the parties and the Board.

It is not the Board's function, in this case, to measure the likelihood of harm to children playing in the creek. To require briefs on the issue of "whether or not the Board has authority to order cleanup of wastes to protect the public from harm not associated with the environmental aspects of that waste . . . ." is to deny the obvious: We have no such authority. Majority Opinion at 2.


It is certainly the Board's function to protect the public. But our power and authority are clearly limited by the Environmental Protection Act; we may protect the public from danger or potential danger only insofar as such danger is associated with the environment. By expanding our authority to the point where the Board is considering a mandate to perform considerable work to clean up a stream for non-environmental reasons is to arrogate to ourselves the power of an equity court. This we cannot do.

This is not to say that the Board may consider only directly environmental effects in reaching our determinations. The Act gives the Board a broad range of factors - other than environmental - which it must consider in reaching its decisions. But to ask for briefs on our authority in an area which the Majority Opinion states explicitly is "not associated with the environmental aspects . . ." exceeds even the broad authority granted in the Act.

I concur with the result in this matter, and with the majority Opinion except as noted above.

  
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Philip Zeitlin  
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 9<sup>th</sup> day of January, 1976.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board