

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1997

IN THE MATTER OF:)
)
PETITION OF RECYCLE) AS 97-9
TECHNOLOGIES, INC. FOR AN) (Adjusted Standard - Land)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 720.131(c))

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority opinion because I believe the Board's procedural rules allow entities to appear before the Board in adjusted standard proceedings without being represented by an attorney. Section 101.107(a)(2) states that any person entitled to participate in Board proceedings shall appear as follows:

A corporation, when a respondent in an enforcement case pursuant to 35 Ill. Adm. Code 103, by an attorney at law licensed and registered to practice in the State of Illinois. In all other proceedings, a corporation may appear through any officer, employee, or representative, or by an attorney at law licensed and registered to practice in the State of Illinois, or both.

35 Ill. Adm. Code 101.107(a)(2). Section 103 of the Board's procedural rules govern enforcement proceedings. Adjusted standard proceedings are not part of that section; rather, they are dealt with separately in Section 106, Subpart G. Section 106, Subpart G is silent as to whether or not a corporation can be represented by a non-attorney. The Illinois Environmental Protection Act (Act) is also silent regarding non-attorney representation for corporations in adjusted standard proceedings. The Board has no authority to infer that an adjusted standard proceeding is an enforcement case and thus subject to the requirements in 35 Ill. Adm. Code 101.107(a). Therefore, Recycle Technologies, Inc. should be allowed to proceed without an attorney if it so chooses.

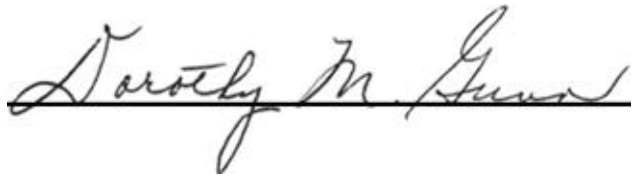
To rule otherwise is against Board rules, past Board practice and public policy which dictates that administrative agencies be less adversarial than court proceedings, and more "user-friendly" in terms of a non-attorney's ability to appear before the Board. As a member of the House of Representatives of the Illinois General Assembly when the Act was passed, as a co-sponsor of the bill and as a member of the Executive Committee that approved the bill, I know that the legislative intent of the Act was to encourage citizen participation in environmental matters. With regard to the Board's role in facilitating environmental cases in Illinois, the Act clearly intended the Board to be easily available to Illinois citizens. The Act was to be part of a new, more accessible way of governing; while the ramifications of the majority opinion in this matter harks back to an antiquated system of closed government proceedings, accessible only to specially educated lawyers and lawmakers.

For these reasons, I respectfully dissent.

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J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 11th day of July, 1997.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn". The signature is written in a cursive style with a prominent initial "D" and a long horizontal stroke.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board