

ILLINOIS POLLUTION CONTROL BOARD  
October 17, 1972

	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	PCB 72-243
	)	
	)	
JERRY FRYE	)	
	)	

DISSENTING OPINION (by Mr. Dumelle)

While I agree with the decision in this case I do not agree with the amount of the penalty levied.

A penalty should penalize and \$500 is simply inadequate in this case. The respondent Mr. Jerry Frye has been twice fined by the Circuit Court of Mercer County in the past under a statute with a different penalty structure. Repeaters ought to have their penalties increased by at least an order of magnitude (ten times) over the past amounts levied of \$50 plus \$22.40 in costs (November 7, 1969 and \$200 plus \$22.40 in costs (February 11, 1970). Thus a penalty of at least \$2000 would have been appropriate just on the ground of repeated violations.

The majority opinion finds and I agree that seven violations on four counts were proven. The Environmental Protection Act provides for penalties up to \$10,000 for violation of the Act plus \$1,000 for each day of violation. Thus total penalties of at least \$43,000 could have been levied by this Board.

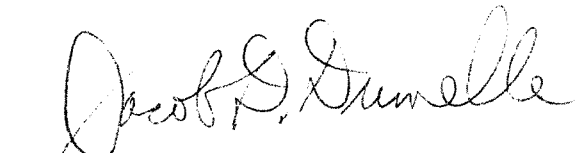
An amount near \$43,000 would be clearly excessive in this case but it is useful to compute as an upper limit.

The most serious violation to me is that of not securing a permit for the landfill some 27 months after the passage of the Environmental Protection Act. A landfill permit is the only way in which the public can be certain that the site is suitable for refuse disposal. If the Frye site is found to be unsuitable then it may mean that an aquifer has now been polluted essentially forever.

In addition, polluted aquifers may emerge into streams to cause problems there. We may be cleaning streams with expensive sewage plants only to be despoiling them with aquifers polluted by poorly located landfills.

In other Board decisions we have levied penalties of \$1000 and up for failure to obtain permits on pollution sources (see EPA v. State Line Foundries, Inc., PCB 71-86, August 5, 1971, 2PCB 191, where a severe penalty of \$7,500 was imposed over my dissent). Mr. Frye is a businessman with 64 municipalities and 4 counties as customers. He services 11,000 homes with a fleet of 9 trucks and owns 3 bulldozers used at his landfill (R. 64). The record shows he has been in his business prior to April 1969 (R. 55). Thus, his claim that he was "not aware it was necessary" to have an EPA permit (R. 55) is difficult to believe. Any businessman with an enterprise of this magnitude and duration would be aware of the permit requirements.

I would have levied a \$2,000 penalty because of repeated past violations and failure to obtain a permit.

  
\_\_\_\_\_  
Jacob D. Dumelle  
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 27<sup>th</sup> day of November, 1972.

  
\_\_\_\_\_  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board