

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1994

LAND AND LAKES COMPANY,)	
JMC OPERATIONS, INC., and)	
NBD TRUST COMPANY OF)	
ILLINOIS as trustee under)	
Trust No. 2624EG,)	
)	
Petitioners,)	
)	
v.)	PCB 94-195
)	(Land Siting Review)
VILLAGE OF ROMEOVILLE,)	
)	
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's finding that the Board has the authority to enforce the conflict of interest provisions of the Illinois Rules of Professional Conduct.

Nothing in the Illinois Rules of Professional Conduct gives this Board the express authority to enforce those rules. The Board is an administrative agency, and I would decline to assume any implied authority to administer rules governing professional conduct. The majority relies on our procedural rule governing appearances and withdrawals, coupled with our rule allowing for sanctions, to conclude that the Board must determine whether there is an impermissible conflict of interest. I fail to see how those two rules somehow give the Board an obligation to enforce the Rules of Professional Conduct.¹

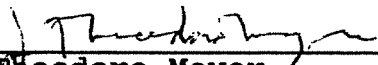
I note that in People v. Kershaw (July 22, 1993), PCB 92-164, cited by the majority, the alleged conflict concerned the Board as a "client" of the attorney, and the question of whether the Board might consent to the alleged "dual representation". The instant case presents allegations of conflict of interest between the Herschbach firm and the parties, not involving the Board as a "client" who might consent to the alleged conflict.

Thus, I would have denied the motion to disqualify on the

¹ I also note that in this landfill siting appeal, if the majority had found a conflict of interest and disqualified the law firm, that attorney could have simply appeared on behalf of the Village of Romeoville as a "consultant". Our rules allow non-attorneys to appear as a representative of a party in all but enforcement cases. (35 Ill. Adm. Code 101.107(a).)

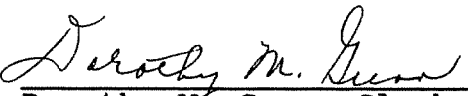
grounds that the Board has no express authority to enforce the provisions of the Illinois Rules of Professional Conduct, and because Land & Lakes cites no other basis for its motion. I take no position on the merits of the allegations of conflict of interest.

For the above reasons, I dissent.



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 15th day of December, 1994.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board