

ILLINOIS POLLUTION CONTROL BOARD
October 2, 1997

SIERRA CLUB AND JIM BENSMAN,)	
)	
Petitioner,)	
)	PCB 98-43
v.)	(Pollution Control Facility Siting
)	Appeal)
CITY OF WOOD RIVER AND NORTON)	
ENVIRONMENTAL,)	
)	
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer and G.T. Girard):

We dissent from the majority opinion because we believe the Board's procedural rules allow entities to appear before the Board in pollution control facility siting appeals 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. The Board has no procedural rules specific to pollution control facility siting appeals at this time. Thus, the Board's procedural rules are silent as to representation by an attorney in pollution control facility siting appeals. The Illinois Environmental Protection Act (Act) is also silent regarding non-attorney representation for corporations in pollution control facility siting appeals. The Board has no authority to infer that a pollution control facility siting appeal is an enforcement case and thus subject to the requirements in 35 Ill. Adm. Code 101.107(a). Therefore, Jim Bensman should be allowed to represent the Sierra Club before the Board in this appeal.

To rule otherwise is against Board rules, past Board practice, and good public policy which encourages administrative agencies to be less adversarial than court proceedings, and more "user-friendly" in terms of a non-attorney's ability to appear before the Board. As Member Meyer stated in his dissent in Petition of Recycle Technologies, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c), (July 10, 1997) AS 97-9 (herein after RTI):

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.

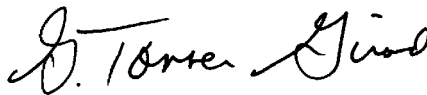
With regard to the Board's role in facilitating environmental cases in Illinois, the Act clearly intended the Board to be easily available to Illinois citizens. The Act provided a new, more accessible way of governing where direct public participation was encouraged in environmental governance. The majority opinion in this matter turns back the clock to a time when environmental decisions were made in government proceedings accessible only to specially educated lawyers. A review of Section 39.2 and 40.1(b) of the Act (415 ILCS 5/39.2 and 5/40.1(b) (1996)) indicates that the Illinois legislature crafted a pollution control facility siting process which requires local governing bodies and encourages local citizens to participate in the initial siting procedure. Today's decision by the majority that the Sierra Club must be represented by an attorney unfairly restricts the participation of citizen groups in the pollution control facility siting process.

While we do not agree with the majority order in this case, we do understand that they feel constrained by the language in the Attorney Act (705 ILCS 205/1 *et seq.* (1996)), the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 *et seq.* (1996)), and subsequent case law involving other state agencies (see RTI decision). Perhaps the majority would agree with us that the best way to clarify this situation would be to pursue specific legislative language excluding the Board from the legal representation requirements in the Attorney Act. We note that there is specific language in the Attorney Act that allows non-attorney representation before certain Illinois Boards and Commissions, such as the Illinois State Labor Relations Board and State Civil Service Commission (705 ILCS 205/1) (1996)).

For these reasons, we respectfully dissent.

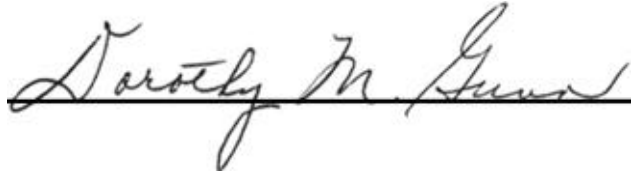
A handwritten signature in black ink, appearing to read "J. Theodore Meyer".

J. Theodore Meyer

A handwritten signature in black ink, appearing to read "G. Tanner Girard".

G. Tanner Girard

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 6th day of October 1997.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board