

ILLINOIS POLLUTION CONTROL BOARD

December 18, 1997

IN THE MATTER OF:)
)
PETITION OF W.R. GRACE &) R98-16
COMPANY - CONNECTICUT , AND) (Rulemaking - Air)
THE ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY FOR)
SITE-SPECIFIC AIR REGULATION:)
35 ILL. ADM. CODE 218.940(h))

DISSENTING OPINION (by R.C. Flemal, J. Theodore Meyer):

We respectfully dissent from the majority's order delivered today. We believe that, as a basic principle, proposed rules should not be sent to first notice without substantive review by the Board. This principle should not be violated unless there are exceptional circumstances. No exceptional circumstances exist here.

When the Board withholds comment on the merits of a proposal until second notice, interested persons, including both the public and the proponents, have no opportunity to comment on the Board's prospective on the proposed rule. This happens because there is no opportunity for public comment after second notice. We believe that this is inappropriate and an abridgment of the public's opportunity to participate in the rulemaking process.

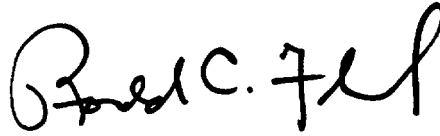
We believe as well that failure to do a substantive first notice compromises the Board's ability to do the best job of rulemaking. In depriving ourselves of the public's full potential contribution, we deprive ourselves of what may be compelling perspective on our rulemaking decision.

Moreover, we also deprive ourselves of the full deliberative opportunity provided by the rulemaking system. That system provides for two Board reviews of the merits of a rulemaking proposal. The first review is that done after a record -- including that produced as a result of a hearing -- has been developed and the Board has had an opportunity to deliberate upon that record and judge whether there is merit in moving the proposal forward. The second review comes after the public has had an opportunity to review the Board's rationale for the rule and to comment on that rationale

In giving up the opportunity to make one of the two judgments on the substance of the proposal, the Board gives up one of its two opportunities (and responsibilities) to apply the individual and collective wisdom of the Board and its members to the proposal. A proposed rule certainly cannot be better for lack of one of the two Board reviews; it can be worse. We personally do not want to give up the opportunity to make the better rule.

The rulemaking system in Illinois is a time-tested system that has proven to produce robust, thoroughly-considered rules. We should not depart from that system without substantial reason.

For these reasons, we dissent.

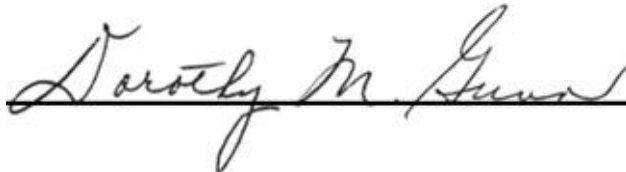


Ronald C. Flemal
Board Member



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 18th day of December, 1997.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board