

ILLINOIS POLLUTION CONTROL BOARD

May 7, 2009

CITY OF JOLIET,)	
)	
Petitioner,)	
)	
v.)	PCB 09-25
)	(Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent from today's majority opinion. I agree with the holding on the Memorandum of Agreement. The denial letter's deficiencies, however, do not end there. The letter provides no specific reason why the City of Joliet purportedly failed to prove that permit issuance would not violate Section 12 of the Environmental Protection Act (415 ILCS 5/12 (2006)). Therefore, the decision of the Illinois Environmental Protection Agency does not comport with Section 39(a)(iv) of the Act, which requires that a denial letter include:


a statement of specific reasons why the Act and the regulations might not be met if the permit were granted. 415 ILCS 5/39(a)(iv) (2006) (emphasis added).

Absent this required statement, the majority chose to sift through the record in an apparent effort to divine IEPA's reasoning. Whether the reasons arrived at by the majority were IEPA's reasons is unknown. The majority opinion is the first articulation of reasons why Section 12 might not be met, and this comes on review, after hearing and briefing. The majority's approach, I believe, is inconsistent with fundamental fairness and strays beyond the Board's authority. See Bradd v. IEPA, PCB 90-173, slip op. at 3 (Jan. 18, 1991); Centralia Environmental Services, Inc. v. IEPA, PCB 89-170, slip op. at 7 (May 10, 1990). I would overturn IEPA's decision and remand the matter to IEPA with instructions to either grant or deny Joliet's permit application in compliance with Section 39(a) and to do so within 30 days.



Thomas E. Johnson

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on May 7, 2009.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board