

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

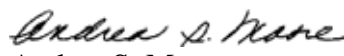
PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 04-7
) (Enforcement - Air)
4832 S. VINCENNES, L.P., an Illinois)
limited partnership, and BATTEAST)
CONSTRUCTION COMPANY, an Indiana)
corporation,)
)
Respondents.)

DISSENTING OPINION (by A.S. Moore):

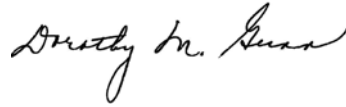
I respectfully dissent from today's majority interim opinion and order denying the People's motion for summary judgment against Vincennes in this matter.

While Vincennes claims it was not notified or informed of the presence of asbestos, "so-called lack of knowledge that the discharge existed provides no defense." Meadlowlark Farms, Inc. v. PCB, 17 Ill. App. 3d 851, 861 (5th Dist. 1974). "The owner of the property that creates the pollution has a duty, imposed by the legislation, to take all prudent measures to prevent the pollution. The efforts by the landowner to control or treat the pollution go to the issue of mitigation, not to the primary issue of liability." IEPA v. Russell Perkinson, PCB 84-83, slip op. at 6 (Oct. 20, 1988).

I am further discomfited by Vincennes' deference to its contractor with regard to asbestos abatement. In IEPA v. McHugh Construction Co., et al., PCB 71-291, slip op. at 3 (May 17, 1972), the Board stated that "the question for our decision is whether, in light of statutory policy, a respondent is in such a relationship to the transaction that it is reasonable to expect him to exercise control to prevent pollution. In applying this test we recognize that there are cases in which a person who receives economic benefits from a transaction so lacks the capacity to control whether or not pollution occurs that it would be unfair to hold him responsible. We doubt, for example, that one who hails a taxicab could be held for its smoky exhaust, or the buyer of a pair of shoes for water pollution at the tannery." *Id.* Following this analogy, I cannot place Vincennes in the same category as the taxicab passenger or buyer of shoes. On the basis of this record, I can only conclude that Vincennes' responsibility for the site has been clearly established. For these reasons, I respectfully dissent.


Andrea S. Moore
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on March 16, 2006.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board