

ILLINOIS POLLUTION CONTROL BOARD
June 10, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 80-105
)
 CITY OF ABINGDON,)
 an Illinois municipal corporation,)
)
 Respondent.)

DISSENTING OPINION (by J. Anderson):

I believe that variance proceedings are necessary to address the circumstances in this case.

I do not believe that the Board can, or should, accept a stipulation in an enforcement action that allows a respondent to continue to violate the Act and Board standards, with full facility upgrading expected only if grant funds are made available at some uncertain future time, and where hardship has not been pleaded, but merely presumed because of the community's small size.

The opinion itself, in part, acknowledges this problem by requiring Abingdon to apply for a variance if it is still in noncompliance after five years (Opinion, p. 5).

Unlike Rockdale (see opinion and concurring opinion in PCB 78-136 IEPA v. Village of Rockdale, May 14, 1981), there are no offsetting circumstances in this case that would tend to justify an exception to the differing notice, justification and deliberation requirements for variance proceedings. Nor do I believe that the "reasonable delay" language of Section 33(b) of the Act is a substitute for a variance, especially when the proof of arbitrary or unreasonable hardship, required as an essential component of variance proceedings, has not been supplied.

The conditions included in an order granting reasonable compliance time in an enforcement proceeding reflect an underlying expectation that compliance was, at the time of the violation, both affordable and "do-able", but where practical considerations make an immediate cease and desist order unrealistic. In addition, mitigating circumstances are considered to ameliorate the sanctions for the proven non-compliance, which is not "forgiven". In the event that compliance is uniquely not affordable or "do-able", the Act provides variance relief as the "forgiveness" mechanism for temporary non-compliance, and site-specific regulatory power for long term non-compliance with the general standard. An enforcement action is not an appropriate vehicle to resolve such problems.

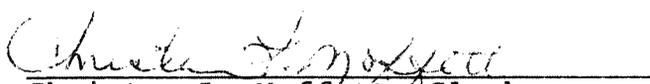
To argue otherwise is to acknowledge a) that the Board's Chapter 3 standards do not apply (at least for five years) if 75% federal or state grant funding is not forthcoming and, b) the Board will allow more of a "pass" in an enforcement proceeding than when considering a variance petition. Imposing a penalty does not set things right--the Act does not allow payments to continue noncompliance.

While I agree that the Board should avoid excessive "compartmentalizing", and while I suspect that the City of Abingdon might meet the requirements for a variance, I do not believe that the record in this case justifies the "flexible" approach taken here. The distinctions in standards of deliberation between enforcement and variance proceedings should not be so blurred in a stipulation that ultimately the Board loses its needed flexibility to deal with variance requests.



 Joan G. Anderson

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Dissenting Opinion was filed on the 25th day of June, 1981.



 Christan L. Moffett, Clerk
 Illinois Pollution Control Board