

ILLINOIS POLLUTION CONTROL BOARD
July 7, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 93-248
) (Enforcement-Land)
 JOHN PRIOR AND INDUSTRIAL)
 SALVAGE, INC.,)
)
 Respondents.)

DISSENTING OPINION (by E. Dunham):

I dissent in this case because I believe that the development permit should not be revoked. Though this is one of the best cases presented to the Board for revocation of the development permit, I believe that there are mitigating factors which were not adequately considered by the majority.

All of the operating permits for the facility have lapsed, and John Prior has been denied prior conduct certification to obtain new or renewed permits. That denial has been affirmed by the Board. John Prior is not able to operate these landfills; except for the limited purpose of completing closure.

Mr. Prior and Industrial Salvage are in bankruptcy. Revoking the development permit deprives the bankruptcy estate of an asset; perhaps its major asset. If the bankrupt is able to sell the site, having an intact development permit would save any purchaser the expense and trouble of obtaining local siting.

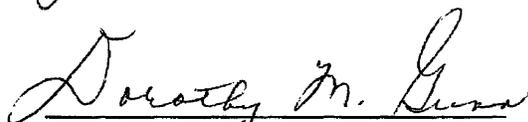
Since Mr. Prior and Industrial Salvage are not able to operate, and are in bankruptcy, the cost of closure and post closure care could default to the State unless an operator can be found that has experience, capital and desire to operate the available portions of the landfill while closing the completed portions of the landfill. Revoking the development permit will make the site less desirable to such a purchaser or operator.

The argument has been made that Mr. Prior's past experience in selecting operators for his landfill has been poor. I would note for the record to the Examiner in this bankruptcy case that the selection of the former operators by Mr. Prior may rise to the level of incompetence or mismanagement that would call for the appointment of a Trustee in Bankruptcy; or should lead to the involvement of the Examiner in any future selection process. I also have faith that the Agency would sufficiently examine and monitor any potential operator as to prevent further problems.

For these reasons, I respectfully dissent.


Emmett E. Dunham II
Emmett E. Dunham II
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 10th day of July, 1995.


Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board