

ILLINOIS POLLUTION CONTROL BOARD  
October 14, 1976

ARCH DEVELOPMENT, INC. )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 76-168  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

CONCURRING OPINION (by Mr. Dumelle):

The major problem in this proceeding is that the Illinois Environmental Protection Agency has established a prohibition on fills in areas affected by a 100-year flood. Because no permit could be obtained, the Petitioner filed this variance before us.

The question of landfills in flood plains was raised in the 1972 hearings on R72-5, Solid Waste Rules and Regulations. The Board, after discussion, did not adopt a flooding frequency rule on the basis that such a regulation would constitute a form of zoning. A landfill, with suitable levees, could then be placed in a flood plain under the Board regulations adopted July 19, 1973.

In this case we have a hole in the ground which is to be filled to grade and placed into wheat production. Were there no Agency 100 year flood area prohibition this case might not have arisen. Is this Agency rule the extralegal equivalent of a Board regulation?

Having raised this question I must then agree with the majority opinion that data are lacking. How often does the site flood? To what depth? How permeable are the banks of this borrow pit? And what amounts and types of leachate (if any) can be expected from the metal remaining in the concrete?

I agree that the Petitioner has not carried its burden. This may be a case of de minimus leachate (or none) but we do not know from this record. A permit denial appeal on the issue of the 100-year

flooding policy might be the vehicle to squarely address the propriety of that guideline.

I concur in the decision.

Submitted by Jacob D. Dumelle  
Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Concurring Opinion was submitted on the 19<sup>th</sup> day of October, 1976.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board