

ILLINOIS POLLUTION CONTROL BOARD
December 6, 1991

IN THE MATTER OF:)
)
GROUNDWATER PROTECTION:)
REGULATIONS FOR EXISTING AND)
NEW ACTIVITIES WITHIN SETBACK) RES 91-1
ZONES AND REGULATED RECHARGE) R89-5
AREAS (35 ILL.ADM.CODE 601,) (Rulemaking)
615, 616, and 617))
("TECHNICAL STANDARDS"))

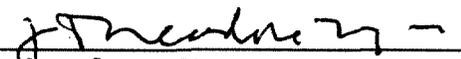
CONCURRING OPINION (by J. Theodore Meyer):

I fully agree with the action taken by the Board in refusing to withdraw or modify its groundwater protection rules in response to the objection by the Joint Committee on Administrative Rules (JCAR). I concur only to express some additional thoughts.

While I served as a state representative, I voted for the creation of JCAR. I continue to believe that JCAR serves an important purpose in reviewing the rules of administrative agencies. As a former legislator, I believe that I understand how legislators think, and their experiences in dealing with differing interest groups. A legislator is able to base his or her decision on anything he or she believes is relevant. However, I must point out that the Board has a much narrower path to follow in making its decisions. Pursuant to the Environmental Protection Act (Act) and the Illinois Administrative Procedure Act (APA), this Board can only base its rulemaking decisions on information in the record of the rulemaking. The information in that record must be obtained through the notice, comment, and hearing process established by the Act and the APA. If certain information is not properly placed in the record, the Board cannot base its decision on that information, regardless of the content of that information. These are the rules which the legislature has established, and the Board must follow them.

Finally, I reiterate the Board's position that these rules are consistent with the statutory mandate of the Groundwater Protection Act.

For these reasons, I concur.



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 9th day of December, 1991.

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