

ILLINOIS POLLUTION CONTROL BOARD
October 25, 1990

CENTRALIA ENVIRONMENTAL)	
SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 89-170
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

CONCURRING OPINION (by B. Forcade and J.D. Dumelle):

We agree with the majority that this permit denial must be affirmed. We disagree, however, with the limiting nature of the majority holding.

The majority holds that most of the Agency reasons for denial must be stricken as an improper attempt to enforce the provisions of the Act by permit denial. In short, the majority holds that a permit can never be denied because the facility has violated the Act (either in the past or at the present time). We disagree with that concept generally and feel the present factual situation shows the error of such a holding.

There is no question that this facility has been very poorly operated in the past. Material was previously disposed of in unpermitted areas and below grade. Further, some of the materials disposed of (organic solvents) were specifically prohibited from disposal at this landfill. These improprieties were of such magnitude that the Agency would require remedial action to correct the situation. The Agency's concern was undoubtedly influenced by the presence of nearby private drinking water wells that might be adversely affected. The Agency concluded that, "no operating permits for additional areas of this landfill [would] be issued by the Agency until an Agency approved remedial action is satisfactorily implemented..."(R. at 981). CESI did not challenge this permit condition.

While no operating permits were to be allowed until completion of the remediation plan, CESI was granted a development permit for Area IV. CESI deposited fill material into Area IV without a permit. To us, this is a continuing pattern of intentional disregard for compliance with the Act and regulations involving the very area for which a permit is sought.

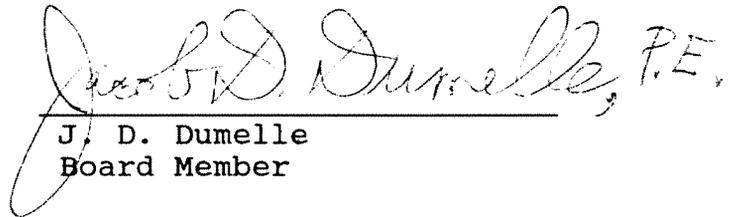
The Agency's October 6, 1989 permit denial letter lists the integrated nature of the facility as a rationale for permit denial:

Since Area IV is an integral part of this facility, an operating permit for it cannot be issued until the existing problems of Areas I, II and III have been remediated. These problems include the increased potential for erosion, run-off, leachate migration and groundwater contamination caused by overfilling and over-steepening the slopes of Areas I, II and III...

We find the integrated nature of the facility and the continuing pattern of improper disposal practices by the applicant more than adequate as a reason to deny the permit. The majority holds this to be "enforcement by improper means". For this reason we disagree with the majority and concur on the outcome.

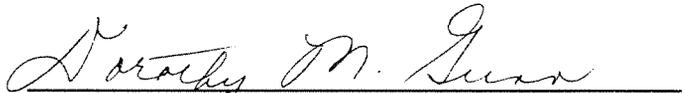


Bill S. Forcade
Board Member



J. D. Dumelle
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 2nd day of November, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board