

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1988

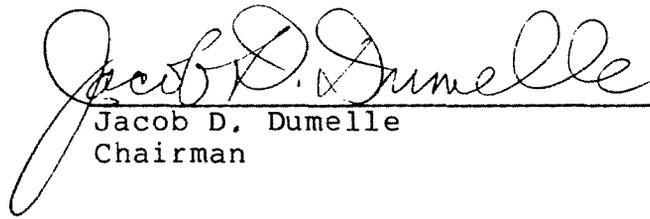
IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R87-6
PHOSPHORUS EFFLUENT STANDARD,)
35 ILL. ADM. CODE 304.123)

DISSENTING STATEMENT (by J.D. Dumelle):

I dissent from the majority Order dated August 4, 1988, relating to the Motion to Exclude Exhibits filed by the Illinois Environmental Protection Agency (Agency). For the reasons set forth below, I would have specifically determined that the documents submitted at hearing receive the same weight as the Board attributes to "public comment."

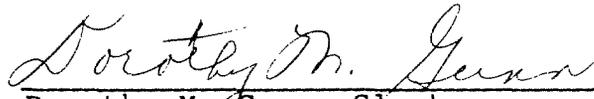
Each of the four documents, Exhibits 45-48, bear the title "Statement by (name) For Presentation at the June 21, 1988 Economic Hearing of the Illinois Pollution Control Board Proposed Amendments to Phosphorus Effluent Standard R87-6." Exhibit 45 is the statement of the principal author of all of the aquatic biology sections in the Economic Impact Statement (EcIS) entitled An Economic Analysis of Proposed Amendments to Water Pollution Regulations Phosphorus Discharges, R87-6. For various reasons, the author was unable to attend either the June 7, 1988 or the June 21, 1988 hearing. The author states "[t]his written statement is an attempt to partially compensate for my absence from the hearings." Further, the author states that he "attempted to address some of the issues that have developed in the June 7, 1988 hearing and in the IEPA comments and BZ&C Response which preceded it." Exhibits 46-48 similarly consist of statements directly related to matters in issue in this proceeding -- statements which also are written in the first person and which closely resemble testimony.

These statements, exhibits 45-48, look very much like "testimony" to me. However, the authors of these statements were not sworn, nor were affidavits attached, nor were they even present to submit their statements into the record -- the Department of Energy and Natural Resources (DENR) presented the statements in support of its EcIS. Thus, the public (here the Agency) was effectively precluded from challenging the substance of these statements by cross-examination of the authors at hearing. To me, this belies the very purpose of a public hearing, which Professor David Currie summed-up well when he stated the "the real utility of a public hearing lies in the opportunity it can afford for exploring the



Jacob D. Dumelle
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Statement was submitted on the 10th day of August, 1988.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board