

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2003

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R03-19
PUBLIC PARTICIPATION RULES IN 35) (NPDES Rulemaking)
ILL. ADM. CODE 309 NPDES PERMITS)
AND PERMITTING PROCEDURES)

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent from the Board's order issued today in this matter. I believe the Board should have granted the motion for a third hearing prior to deciding whether or not to adopt the proposal for first notice under the Administrative Procedure Act (5 ILCS 5/100 *et seq.* (2002)).

Of primary concern are the proposed language changes offered by the Illinois Environmental Protection Agency (Agency) in a public comment filed on May 1, 2003. A third hearing is important to hear testimony and cross-examine Agency witnesses regarding proposed language changes offered by the Agency. Holding a third hearing prior to first notice would not unduly delay this proceeding, and would, in fact, allow the Board to make a more reasoned determination in any first-notice order.

The stated purpose of the Board's rulemaking hearings is to gather information and comments to guide the Board in its rulemaking process. 35 Ill. Adm. Code 102.100. The process customarily allows for full record development. As a result, the Board generally attempts to receive all admissible information in its rulemaking proceedings. No material prejudice would have resulted if the Board had granted the motion for a third hearing, and the Board would have the benefit of testimony and cross examination on the Agency's proposed modifications. I find it ironic that the proponents of a proposal designed to expand public participation are so vigorously opposed to additional public participation in this instance.

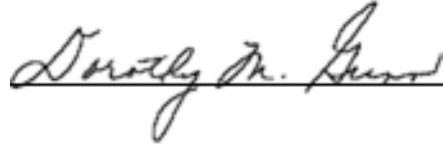
Although I am heartened by the majority's decision to hold at least one additional hearing if the Board proceeds to first notice in this matter, I see no reason not to hold that hearing at this time.

For these reasons, I respectfully dissent.

A handwritten signature in black ink, consisting of a large, stylized 'T' and 'J' that loops together, followed by a horizontal line extending to the right.

Thomas E. Johnson
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on May 15, 2003.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board