

ILLINOIS POLLUTION CONTROL BOARD
June 7, 1990

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 90-73
) (Enforcement)
 ILLINOIS CEMENT COMPANY,)
 an Illinois corporation,)
)
 Respondent.)

DISSENTING OPINION (by J. Theodore Meyer and M. Nardulli):

We dissent from the majority's order granting complainant's motion to continue hearing for 120 days.


The Attorney General, on behalf of complainant, filed this enforcement case on April 20, 1990. The instant motion to continue hearing for 120 days was filed on June 4, 1990. Complainant states that settlement negotiations had been proceeding, but that an impasse has been reached. Thus, complainant contends that it requires additional time to prepare for a contested hearing, including the filing of interrogatories and requests for production of documents, and subsequently discovery depositions.

We are unable to understand how complainant could have been engaged in settlement negotiations before pursuing discovery. To do so, without being informed of the full circumstances of the case, takes a great risk that any settlement reached may be inadequate. Complainant has essentially stated that it was willing to possibly settle for less if an agreement could have been reached, and that only now that an impasse has been reached will complainant explore the full facts of the case. In other words, complainant engaged in settlement negotiations without knowing what this case is "worth". We strongly object to this conduct.

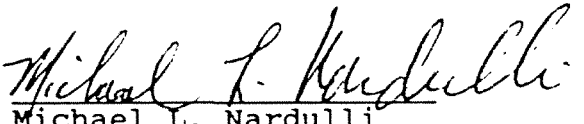
Additionally, we believe that even if a continuance was warranted, 120 days is much too long. In the civil courts it is not uncommon to be forced to perform discovery in 21 to 30 days. Even doubling this time to 60 days is only half of the time requested by complainant. Complainant, as the prosecutor of this case, controls when the case was filed with the Board, and thus should be at least minimally ready to proceed with the case the day it is filed. By granting complainant's motion, the majority has allowed complainant until October 7, 1990 to prepare for hearing. That is five and a half months to prepare to proceed with a case which should have been at least minimally ready on April 20, the day it was filed with the Board. We cannot agree with this type

of delay.

For these reasons, we dissent.

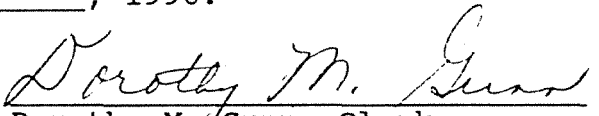


J. Theodore Meyer
Board Member



Michael L. Nardulli
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 11th day of June, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board