

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 1990

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 90-15
	)	(Enforcement)
WISCONSIN CAN COMPANY,	)	
	)	
Respondent.	)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation in this case.

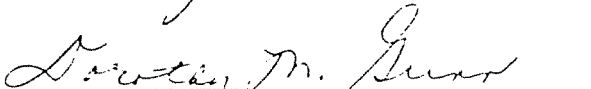
Neither the Illinois Environmental Protection Agency (Agency) nor the Attorney General have articulated any standards as to what factors should be considered when negotiating a fine to be imposed pursuant to a settlement agreement. Additionally, although the proposed settlement agreement states that Wisconsin Can's noncompliance was economically beneficial in that it did not pay permit fees for fourteen years, there is not any specific information on the amount of that economic benefit. The proposed settlement agreement also fails to mention that Wisconsin Can apparently operated its equipment for a number of years without the delay and expense of applying to the Agency for permits. Section 33(c) of the Environmental Protection Act specifically requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the amount of the economic benefit, not just a statement that an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$7,500 even comes close to the savings realized by Wisconsin Can.

Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against Wisconsin Can. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f). I am pleased that the Attorney General is beginning to bring enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at a minimum, recognize that the Board could award costs and reasonable fees.

For these reasons, I dissent.

  
J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, hereby certify that the above Dissenting  
Opinion was filed on the 8<sup>th</sup> day of June, 1990.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board