

ILLINOIS POLLUTION CONTROL BOARD
July 2, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
v.) PCB 71-41
)
CLAY PRODUCTS COMPANY, Et al)
)
Dissenting opinion (by Mr. Dumelle)

This is another in a long list of cases in which I feel that the Board has simply been too lenient. I agree with the findings but the penalty imposed is much too low. Instead of \$500 it should be on the order of \$3,000.

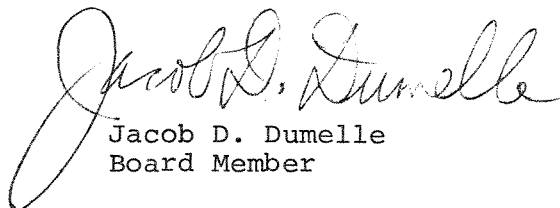
The Board's opinion and order cover eight (8) violations of the Environmental Protection Act and the Refuse Site regulations. Each of these could carry with it a penalty up to \$10,000 for violating the Act and \$1,000 for each day of the violation.

Without counting up multiple days of violations, it is obvious that at least \$88,000 in penalties could have been assessed. I do not advocate that amount in this case because it is apparently a small operation. But I do feel that the \$500 fine in this case is an incentive to all landfill operators to not worry about being caught. It amounts to a slap on the wrist when it should have been a kick in the pants.

While not decisive in my own thinking there is the matter of the cost of prosecution to consider. The transcript for this case cost the taxpayers of Illinois about \$2,000. The time of the professional persons appearing as witnesses or attorneys also cost the State money. It is probable that even a \$3,000 penalty would not have covered the costs of prosecuting this case to protect the public health.

In that last phrase is the point I believe the Board has missed. The reason for regulations on "sanitary landfills" is simply to keep them "sanitary". Garbage, if improperly handled, becomes a public health hazard by providing food for rodents and insects, by methane or hydrogen sulfide or odor generation and by water contamination. The record in this case points to rodents (R.69-70). And the record is clear that this landfill is at least only three blocks from residences (R. 59-60). The accepted exhibits show garbage (Ex. C-3-A, C-5-B, C-8-A, and C-8-B). In addition, the consecutive day exhibits show refuse not covered (Ex. C-8-A and C-8-B).

And so the chain in this case leading to a public health hazard is complete. The uncovered garbage is there, the rats are there and the homes are nearby. The Board should deter future public health hazards of this type from developing by more substantial fines.

A handwritten signature in cursive script that reads "Jacob D. Dumelle". The signature is written in black ink and is positioned above the printed name and title.

Jacob D. Dumelle
Board Member