

ILLINOIS POLLUTION CONTROL BOARD  
August 31, 1989

IN THE MATTER OF: )  
 )  
GROUNDWATER PROTECTION: REGULATIONS ) R89-5  
FOR EXISTING AND NEW ACTIVITIES WITHIN )  
SET-BACK ZONES AND REGULATED RECHARGE )  
AREAS (35 ILL. ADM. CODE 601, 615 )  
616 AND 617) )

CONCURRING OPINION (by B. Forcade):

I agree with the major thrust of this proposal, but I disagree with one component. Therefore, I concur. I also have significant questions about the pesticide storage and handling provisions of subpart I.

As presently written, the proposal requires a "new" regulated activity in a "sensitive area" to take initial samples of the groundwater quality. If that facility causes groundwater contamination, the facility owner must clean-up the groundwater to approximately the same purity as it was in the initial samples.

An "existing" regulated activity in a "sensitive area" is also required to take initial samples. However, if the existing facility pollutes the groundwater, it is not required to clean it up to the level of purity of the initial samples. It is only required to clean-up if, and to the level that, this Board adopts some numerical standard.

Take a hypothetical chemical, DMD. Assume that it is present at a level of 1 or 2 parts per million (ppm), but that the Board has set a standard of 100 ppm based on protection of human health. Assume that a new facility takes samples and finds DMD at 1-2 ppm. Later, the facility accidentally causes contamination of the groundwater up to a level of 110 ppm. The "new" facility would be required to clean-up the groundwater from 110 ppm to approximately the original 1-2 ppm level of DMD.

In an exactly similar situation, an "existing" facility would only be required to clean-up from 110 ppm down to 100 ppm. That is not right.

In a situation where the Board has not yet adopted any health-based numbers, the new facility would be required to clean-up from 110 ppm down to 1-2 ppm. The existing facility which caused the same contamination would not be required to clean-up at all (in fact it would not be violating any laws, since the Board had not set a health-based standard). The Board

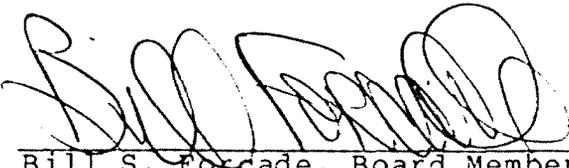
has already stated that we cannot set numerical limits for the majority of toxic substances because the necessary studies have not been done (R88-21, First Notice [August 30, 1989], p. 2).

The current proposal allows existing facilities to contaminate the groundwater from whatever level of purity presently exists, up to some arbitrary level selected by the Board as "safe." If no "safe" level has been set by this Board, then any amount of contamination would presumably be acceptable. I do not think this type of degradation should be allowed. Also, it creates certain problems:

1. What if we decide the original 100 ppm level for DMD is not safe and that new scientific evidence demands 10 ppm as a safe level. Do we go back and make all the existing facilities clean-up the groundwater they contaminated from 1-2 ppm up to 100 ppm?
2. What if a "new" facility and an existing facility are located in the same sensitive area and levels of DMD rise from 1-2 ppm to 99 ppm. Who, if anyone, has to clean-up? Is that fair?

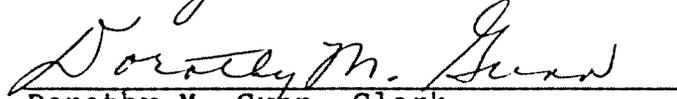
I would have taken the corrective action clean-up standards of Section 616.211(d) for new facilities and added them to the present standards for existing facilities at Section 615.211. That way, both new and existing facilities will be held to the same clean-up standard.

I also have concerns with the pesticide provisions of subpart I. The record indicates that a 1987 Illinois Department of Public Health ("IDPH") study tested wells around 81 agricultural dealerships and found pesticide contamination in 65% of the wells tested (R. 68). This is an alarmingly high frequency of contamination, yet none of the participants provided copies of the IDPH study and no one from IDPH testified. At a minimum, this indicates a need for strong enforceable controls. More information would be helpful in determining whether the existing proposal is adequate.



Bill S. Forcade, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 12<sup>th</sup> day of September, 1989.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board