

ILLINOIS POLLUTION CONTROL BOARD
January 10, 2002

COUNTY OF SANGAMON,)	
)	
Complainant,)	
)	AC 01-16
v.)	(SCDPH 00-AC-1)
)	AC 01-17
EVERETT DAILY,)	(SCDPH 00-AC-2)
)	(Administrative Citation)
Respondent.)	(Consolidated)

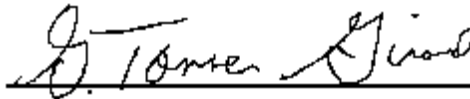
DISSENTING OPINION (by G.T. Girard):

I respectfully dissent from the Board's order issued today in this matter. I believe that there are genuine issues of material fact concerning the issues of estoppel as well as what constitutes open dumping. Therefore, summary judgment is not appropriate, and this matter should proceed to hearing.

The respondent argues that the complainant should be estopped from bringing the administrative citation because there are issues of fact. However, the majority finds that the "facts of the present administrative citation do not rise to the level necessary to justify application of the doctrine of estoppel to the County's [complainant's] actions." The record before the Board does not support this finding. It is undisputed that the complainant performed an inspection of the property; however, the parties do not agree on what the purpose of that inspection was. Under one scenario the complainant could win but under the second scenario the respondent may prevail. Therefore an issue of fact exists and the matter should go to hearing.

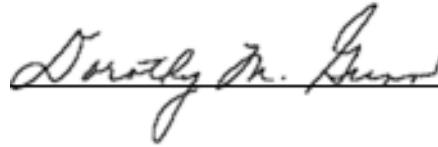
On the issue of what constitutes open dumping, respondent's affidavit asserts that the materials on the property are items for which respondent has a planned use. Complainant maintains that the items are discarded and are therefore litter. Although depositions and affidavits have been filed, I do not believe either is sufficient to decide this issue for one party or the other. Therefore I believe this matter should go to hearing.

For these reasons I respectfully dissent.



G. Tanner Girard
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on January 16, 2002.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board