

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 89-304  
 ) (IEPA No. 10085-AC)  
G & M WRECKING CO., INC., ) (Administrative Citation)  
 )  
Respondent. )

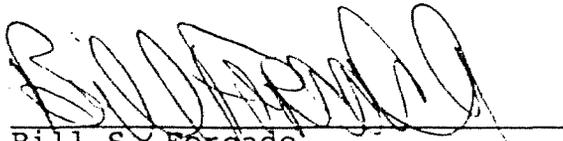
DISSENTING OPINION (by B. Forcade):

I respectfully dissent from today's decision. The majority concludes that a burning pile of rubber coated copper wire does not constitute open dumping and open burning. Open dumping is defined at Section 3.24 of the Environmental Protection Act as, "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." I certainly believe that a burning pile of rubber coated copper wire constitutes consolidated refuse, and that the burning pile of refuse does not meet the requirements of a sanitary landfill. The definition of "open dumping" does not require that we establish where the waste came from or the identity of who placed the material at that location. Will this Board reject all future administrative citations or enforcement actions for open dumping where the source of the waste and the identity of the "dumper" are not proven ?

I believe that "open dumping" and "open burning" are statements of observable fact which were proven in this case. The only question was whether G & M's actions (or inactions) had caused or allowed such facts. After reviewing the record, I believe G & M had caused or allowed such facts to occur.

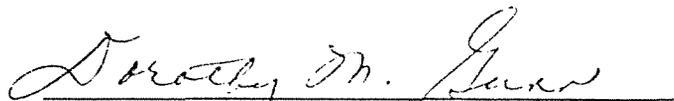
In my opinion, today's case represents another example of this Board attempting to improperly entangle the Illinois Environmental Protection Agency's ("Agency") administrative citation process. There is a growing trend by the majority to find some method of absolving a respondent of the administrative citation penalty where there is an allegation at hearing that the site has been cleaned up. I disagree. No subsequent cleanup can obviate that fact that on day X the site was in violation. Additionally, the Agency must now carry the burden of inspecting the property just before hearing to adequately respond to such allegations. I find no such burden imposed by the Environmental Protection Act. Sections 21(p) and (q) are not intended to give respondents the choice of EITHER paying the civil penalty of \$500 OR cleaning up the site. Second, this Board seems overly inclined to find that the Agency field inspectors (or the

associated paperwork) created a bar to prosecution, either by confusing the respondent or committing the Agency to a course of conduct. I must conclude that the majority simply dislikes the administrative citation process.



Bill S. Forcade  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 5<sup>th</sup> day of September, 1990.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board