

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990


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

DISSENTING OPINION (by J. Theodore Meyer):

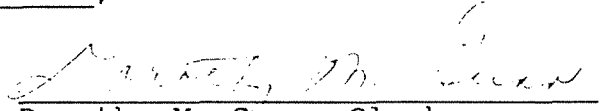
I dissent from the majority opinion in this matter. My dissent is based on two issues. First, I believe that there is sufficient indication in the record to support a finding of "open dumping". As the majority states, the Agency inspector witnessed two men standing next to a pile of burning rubber-coated wire. I believe that this occurrence meets the definition of open dumping--the consolidation of refuse at a disposal site which does not meet the requirements of a sanitary landfill. (Section 3.24 of the Environmental Protection Act.) I believe that the majority's concern that the record does not show "where the wire came from" (majority opinion at p. 4) is irrelevant to the issue of open dumping. Additionally, I believe that it is clear that the wire is "refuse".

Second, I strongly disagree with the majority's implication that the question of who "dumped" the wire on the property is relevant in this case. I believe that the administrative citation system, as created by the General Assembly, imposes strict liability on landowners. In other words, if a violation which is subject to the administrative citation process occurs on a person's property, that landowner is liable for the penalty established by statute. The only exception to this strict liability is where the landowner can demonstrate "uncontrollable circumstances". (Section 31.1(d)(2) of the Act.) I believe that the category of "uncontrollable circumstances" is limited to acts of God.

For these reasons, I dissent.

  
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J. Theodore Meyer  
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.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board