

PCB04-187

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STATE OF ILLINOIS
Pollution Control Board

Mr. J. Philip Novak, Chairman
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
Chicago, IL 60601

Re: Log No. 2003-366
Sutter Transfer Station
Sutter v. IEPA

Dear Chairman Novak:

As a lawyer who is interested in the property rights of real estate owners, the decision of the Illinois Pollution Control Board on September 16, 2004, in the above captioned case is highly troubling. I urge you to affirm the IEPA's position at the appropriate time (based upon the IPCB's review of the two remaining issues).

The arguments of the Environmental Protection Agency as set forth in the decision of the IPCB are entirely logical and reasonable. They greatly outweigh the presentation of the petitioner, Sutter Sanitation, Inc., in its discussion of the issues.

The rights of surrounding property owners to a garbage facility are negated far earlier than the applicable Statutory provisions require and are sufficient to cease all residential development within the stated area of 1,000 feet prior to a time when a State permit is issued to operate the facility. As you are well aware, such time may consume years of hearings and litigation. This is certainly unfortunate for the surrounding property owners.

Until the legislature clarifies when the so-called "establishment" of the facility begins, it is inappropriate in my judgment for the Board to usurp the IEPA's decision-making authority.

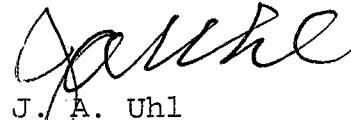
It is difficult to understand how rights under Section 22.14 of the EPA (415 ILCS 5) may be "established" at a time when not only is no application pending before IEPA, but *no application has even been filed*. This type of interpretation defies logic.

Further, I question the propriety of you being involved in the appeals process in such a case as Sutter when the issue concerns establishment rights, particularly in view of the fact that you sponsored legislation in the House (HB 1729) which would define "establish" in Section 22.14 retroactively to mean the date a sitting application is filed. This is certainly a case in which, to avoid the appearance of impropriety, you, especially as Chairman of IPCB, should recuse yourself from consideration of such matter.

For the above reasons, I strongly urge you to reaffirm the IEPA's position on the two remaining denial points.

Very truly yours,

DOWNING & UHL



J. A. Uhl

JAU:kt

cc: Mr. Frank C. Watson
State Senator
51st Senate District
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