

ILLINOIS POLLUTION CONTROL BOARD

February 15, 2001

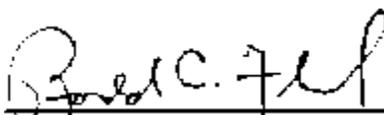
VILLAGE OF PARK FOREST,)
)
 Complainant,)
)
 v.) PCB 01-77
) (Enforcement – Land, Water)
 SEARS, ROEBUCK, & CO.,)
)
 Respondent.)

DISSENTING OPINION (by R.C. Flemal):

I respectfully dissent from the majority's order delivered today because I believe that the Board does not have authority to hear third-party cost recovery cases. As a creature of statute, the Board has no authority except that expressly provided by statute. See Village of Lombard v. Pollution Control Board, 66 Ill. 2d 503, 363 N.E.2d 814 (1977), ("An administrative Agency, such as the Pollution Control Board, has no greater powers than those conferred upon it by the legislative enactment creating it."). Neither the Environmental Protection Act, nor any other statute, grants authority to the Board to hear third-party cost recovery cases. Absent any explicit authority, no authority exists.

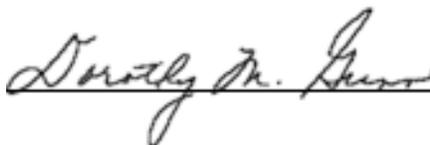
That portion of the complaint that seeks recovery of remediation costs accordingly should have been dismissed as frivolous, because the Board does not have the authority to grant the relief requested.

For this reason, I dissent.



Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 16th day of February 2001.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board