

ILLINOIS POLLUTION CONTROL BOARD  
April 9, 1992

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 92-24  
 ) (Enforcement)  
MODINE MANUFACTURING COMPANY, )  
a Wisconsin corporation, )  
 )  
Respondent. )

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation in this case.

Section 42(h)(3) of the Environmental Protection Act specifically requires the Board to consider any economic benefits accrued by noncompliance. However, the stipulation contains conflicting statements on this issue. The stipulation states:

Modine's noncompliance with pollution control requirements was economically beneficial in that it utilized its unpermitted equipment without incurring the financial obligation associated with emission controls. Respondent asserts that no economic benefits were obtained by any alleged noncompliance on its part. (Stipulation at 15.)

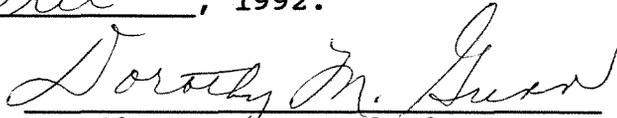
Not only do these statements conflict as to whether there was any economic benefit, but there is no specific information on the amount of any economic benefit. I believe that the Act contemplates a consideration of the complete amount of the economic benefit. For example, what costs were avoided by being able to operate the equipment without waiting until the permits were applied for and obtained? Without more specific information, it is impossible to know if the penalty of \$20,000 comes close to any savings realized by respondent.

Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against respondent. (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f).) I am pleased that the Attorney General is bringing enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at an absolute minimum, recognize that the Board could award costs and reasonable fees.

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 10<sup>th</sup> day of April, 1992.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board