

ILLINOIS POLLUTION CONTROL BOARD
January 18, 1991

GALLATIN NATIONAL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 90-183
) (Variance)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by J.D. Dumelle):

This Board adopted the landfill regulations at issue here on August 17, 1990. They became effective on September 18, 1990.

The major thrust of any landfill rule is to prevent groundwater contamination. To do this it was determined that the background levels of certain substances be measured for at least four quarters [Section 812.317(1)].

The majority here gives variance from the Board's new and "model" rules to the State's newest and largest landfill. Let me pose a hypothetical. Suppose the missing fourth quarter sample (to be taken late in May, 1991) shows some constituent in excess of drinking water quality standards. Would it then be sensible to even locate the landfill at this site thus possibly adding to the groundwater levels of that parameter?

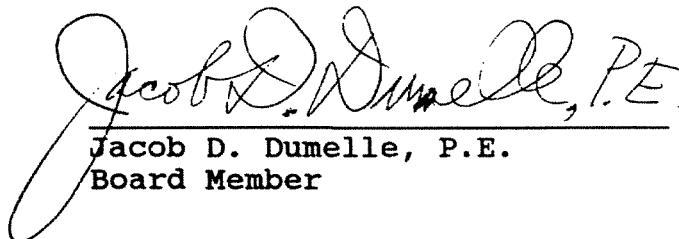
The point is that the four quarters of background data also rightly influence the threshold question of whether or not to even grant a landfill permit at the site in question. Once variance is granted as done here, then the Agency is helpless to use this data when received to deny the permit. The majority has thus made a leap of faith that all will be well with that fourth quarter sample. Note that a May sample comes in the high precipitation Spring season.

The majority's action may not in fact speed up construction of this landfill. As pointed out by Douglas Keats, a wetlands permit must also be obtained from the U.S. Corps of Engineers (R. 51). Thus the impetus for the variance ("to save one construction season") may vanish if the Corps of Engineers takes a great deal of time. Various articles have appeared recently describing a chaotic state in federal wetlands policy.

This opinion is being written late because of intervening surgery. An April 2, 1991 story in the Chicago Tribune by Stevenson Swanson tells of the Agency's April 1st permit approval

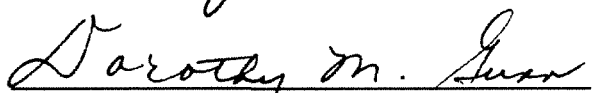
for the subject landfill. But the article goes on to relate that the wetlands determination has yet to be made by the Corps of Engineers. And the rejection of a wetlands permit by the Corps for the Bartlett landfill in Northwest Cook County is also described.

I would have adhered to the rule's requirements for four quarters of background data.



Jacob D. Dumelle, P.E.
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 14th day of May, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board