

ILLINOIS POLLUTION CONTROL BOARD
January 24, 1991

THOMAS FREDETTE,)
)
 Complainant,)
)
 v.) PCB 89-61
) (Enforcement)
 VILLAGE OF BEECHER,)
)
 Respondent.)

CONCURRING OPINION (by B. Forcade, J. D. Dumelle, and J. Theodore Meyer):

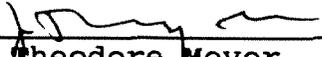
We respectfully concur with today's action; we agree with the bulk of the opinion and order, but believe that a performance bond is appropriate in the circumstances of this case.

The primary purpose of enforcement is to ensure compliance by the facility in question. The Act specifically empowers this Board to require the posting of a performance bond or other security to correct the violation. Section 33(b) of the Act. We must note that the Board does require performance bonds in other circumstances. (See 35 Ill. Adm. Code 807.663 and 807.666 regarding surety bonds for guaranteeing performance of closure and post-closure care at waste management sites, and 35 Ill. Adm. Code Part 807 Appendix A, Illustrations D, G, & H. Units of local government can qualify for non-surety bonds.)

The Village of Beecher's five years of continued non-compliance with the terms of its NPDES permit coupled with the Village's failure to attend to the defense of this citizen enforcement action, convince us that such security is appropriate here. The violations found today would warrant a substantially higher civil penalty than adopted today. However, we believe that future compliance could be best achieved by the lower civil penalty adopted today and by adopting a significant performance bond. If Beecher chooses the non-surety bond and ultimately complies, then there is no cost to Beecher for the bond. Since the Board's action today does not adopt a performance bond, we concur.

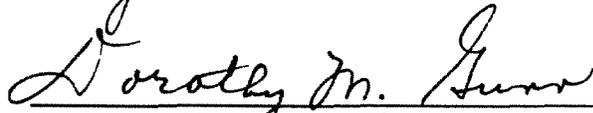

Bill S. Forcade
Board Member


J. D. Dumelle
Board Member



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 1st day of February, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board