

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

INDUSTRIAL FUELS & RESOURCES/)
ILLINOIS, INC.,)
)
PETITIONER,)
)
v.) PCB 90-53
) (Landfill Siting Review)
CITY COUNCIL OF THE CITY)
OF HARVEY,)
)
Respondents.)

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's order denying Industrial's motion for reconsideration. I would have allowed reconsideration for the following reasons.

First, as indicated in my written explanation of vote, I only concurred with the Opinion to the extent that it concluded that "it is the applicant who defines the intended service area, NOT the local decision making body" and with that part of the conclusion which reversed Harvey with respect to its finding regarding Criterion (vi). I did NOT concur with the balance of the Opinion regarding Criteria (i), (ii), (v) and (vii). For this reason the actual vote on the Opinion was 4-3 against its adoption insofar as these four Criteria are concerned, not 4-3 for its adoption as indicated in the Opinion.

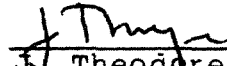
Therefore, Industrial's contention that the Board's September 27 opinion does not satisfy the requirements of Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1988), 175 Ill. App.3d 1023, 530 N.E.2d 682, 125 Ill.Dec. 524, merely reinforces my concern, articulated in my September 27 supplemental statement, that the courts provide guidance on the question of whether a majority of the Board must vote in support of the opinion (as opposed to the underlying decision, set forth in the order) for that opinion to be sufficient to support the Board's decision.

There is a difference of opinion as to whether there must be at least four Board members voting in support of an opinion, or, as is the case in the courts, whether it is sufficient that at least four Board members vote in support of the outcome of the case, and explain their reasons in concurrences or supplemental opinions. Because landfill siting appeals, in particular, are often complicated and involve a number of separate disputed issues, a requirement that four Board Members absolutely agree (i.e. straight "aye" votes, rather than

concurrences) with all aspects of an opinion could create a procedural nightmare. I again ask the courts to address this problem.

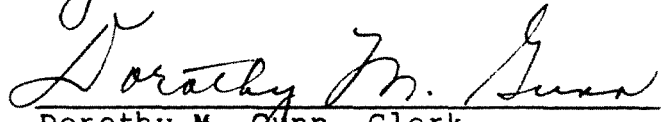
Second, I continue to believe that Harvey's decision denying site approval was against the manifest of the evidence, and that therefore that decision should have been reversed.

For these reasons, I dissent.



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 17th day of January, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board