

ILLINOIS POLLUTION CONTROL BOARD
August 9, 1990

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|-------------------------------|---|---------------|
| PEOPLE OF THE STATE |) | |
| OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 90-69 |
| |) | (Enforcement) |
| MATERIAL SERVICE CORPORATION, |) | |
| a Delaware corporation, |) | |
| |) | |
| Respondent. |) | |


DISSENTING OPINION (by J. Theodore Meyer):

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

The proposed settlement agreement states that respondent's noncompliance was not economically beneficial, except that respondent saved approximately \$850 in permit fees which would have otherwise been required. I find this statement to be contradictory, since by admitting that \$850 was saved demonstrates at least some economic benefit. Additionally, I note that there is no mention of the economic benefit of operating the unpermitted equipment without the delay of applying to and waiting for the Agency to issue permits, although that language is routinely repeated in other stipulations of this type. Section 33(c) of the Environmental Protection Act specifically requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the amount of all economic benefit. Without more specific information, it is impossible to know if the penalty of \$4,000 even comes close to any savings realized by respondent.

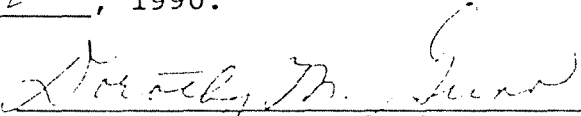
Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against respondent. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f). I am pleased that the Attorney General is beginning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

For these reasons, I dissent.



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 9th day of August, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board