

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 90-106
	)	(Enforcement)
VILLAGE OF IPAVA, an Illinois	)	
municipal corporation,	)	
	)	
Respondent.	)	

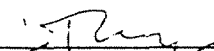
DISSENTING OPINION (by J. Theodore Meyer):

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

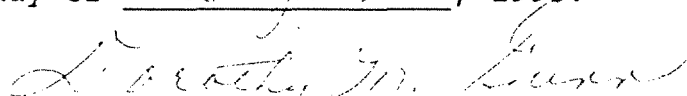
Although the proposed settlement agreement states that respondent's noncompliance was economically beneficial in that respondent operated the public water supply without construction of improvements to remove radium, and therefore avoided costs of construction and permit applications, there is not any specific information on the amount of that economic benefit. Section 33(c) of the Environmental Protection Act requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the amount of economic benefit, not just a statement that an economic benefit was realized. Additionally, I take issue with the statement that a penalty is inappropriate "in that the violations did not pose a serious health risk." Taken to its logical conclusion, this statement would mean that a penalty is inappropriate in all cases where a respondent operated without a permit, since operating without a permit does not, in and of itself, create a health risk. The fact that respondent has agreed to construct the necessary improvements also does not convince me that no penalty should be paid. Compliance after the fact does not mean that no penalty should be paid for the violation.

Finally, as I pointed out in my June 7, 1990 dissent in this case, if this case had been brought in the name of the People of the State of Illinois, costs and fees could have been assessed against respondent. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f).

For these reasons, I dissent.

  
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J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, hereby certify that the above Dissenting  
Opinion was filed on the 5<sup>th</sup> day of August, 1990.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board