

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1987

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 85-69
)
MAPLEHURST FARMS, INC., AN)
ILLINOIS CORPORATION,)
)
Respondent.)

CONCURRING OPINION (by J. Anderson):

The Board, in accepting this stipulated settlement, stated:

The Board notes that the allegations of the Agency are serious. If Maplehurst had admitted to the violations complained of by the Agency, the terms of the proposed settlement would likely have been deemed insufficient to redress the alleged wrongs. (Board Opinion, p.3)

This statement reflects the ultimate contradiction in which the Board finds itself when accepting a settlement of this type. By its terms, the alleged violations are neither proven nor admitted. By thus precluding the Board from determining whether a violation has occurred, there is no basis whatsoever for making any determination at all.

This case especially sends out an unfortunate message. It suggests that a person can avoid both findings of violation and penalties if an after-the-fact compliance program takes place. Put another way, as long as monies are paid for the dead fish, a person gets one "freebie" spill with impunity. And I should note that, even without a penalty, there is a deterrent effect where there is a finding of violation, particularly since the Board can later take official notice of the violation should a subsequent spill occur.

These kinds of settlements run contrary to the notion that voluntary "up-front" compliance is what is to be rewarded. This settlement gives no explanation as to why spill containment was not implemented long ago.

In any event, while I do understand the various factors that may encourage this type of "no-violations" settlement, I fear that too many of these will seriously diminish the seriousness

with which timely compliance is viewed by the regulated community.

For these reasons I concur.

Joan G. Anderson
Joan G. Anderson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 3rd day of February, 1987.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board