

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1987

IN THE MATTER OF)
)
EUGENE FUNK) AC 87-99
) (IEPA Docket No. 85-73-AC)
Respondent.)

DISSENTING STATEMENT (by B. Forcade):

I respectfully dissent from today's decision. The majority would hold that the General Assembly's intention was to exclude unpermitted landfills from the scope of Section 21(p) of the Illinois Environmental Protection Act ("Act"). This holding unnecessarily eliminates an effective enforcement mechanism. I do not feel that the language of Section 21(p) supports this outcome. Additionally, I am disturbed that the majority, by so holding, dismisses this case on a theory that was not advanced by the respondent and has not been briefed by either party.

Section 21(p) reads:

Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

1. refuse in standing or flowing waters;
2. leachate flows entering waters of the State;
3. leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency);
4. open burning of refuse in violation of Section 9 of this Act;
5. uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;
6. failure to provide final cover within time limits established by Board regulations;
7. acceptance of wastes without necessary permits;


8. scavenging as defined by Board regulations;
9. deposition of refuse in any unpermitted portion of the landfill;
10. acceptance of a special waste without a required manifest;
11. failure to submit reports required by permits or Board regulations; and
12. failure to collect and contain litter from the site by the end of each operating day.

The prohibitions specified in this subsection (p) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

Section 21(p) of the Act applies to sanitary landfill operations "required to have a permit." The respondent's operation certainly was required to have a permit, in order to comply with the Act and regulations that prohibit open dumping and conducting disposal operations without a permit. The majority effectively rewrites Section 21(p) so that it only applies to those operations that "in fact, have a permit."

The General Assembly's intent on the scope of applicability of the administrative citation mechanism is further reflected by the specific types of violations enumerated in Section 21(p). Section 21(p)(7) allows the Illinois Environmental Protection Agency ("Agency") to issue administrative citations for "acceptance of wastes without necessary permits." It would seem to me that the respondent is charged with acceptance of wastes without the required Section 21(d) permit. Therefore, the charge is certainly appropriate under Section 21(p)(7).

I find nothing in the statutory language to preclude issuance of an administrative citation against an unpermitted landfill operation and Section 21(p)(7) seems to specifically authorize it. Accordingly, I dissent.



Bill S. Forcade
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Statement was submitted on the 9th day of October, 1987.

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