

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1987

JOHN DALEY, WILLIAM O. LIPINKSI,)
TIMOTHY DEGNAN, and PATRICK HUELS)
for themselves and on behalf of)
the residents of the 21st)
Representative District, the 5th)
Congressional District, and the)
11th Senatorial District of the)
State of Illinois, and the 11th)
Ward of the City of Chicago,)
Complainants,)
v.) PCB 87-132
THE CITY OF CHICAGO, a Municipal)
Corporation,)
Respondent.)

CONCURRING STATEMENT (by B. Forcade):

I disagree with some of the rationale in the majority's order denying a seal, but support the outcome.

Section 34 of the Environmental Protection Act clearly authorizes the Illinois Environmental Protection Agency ("Agency") to seal a facility upon a finding of immediate danger to health. Section 34 (b). The language of that Section confers no authority on the Board to seal a facility. The Complainants have not provided a legal theory that would confer such authority upon the Board. Consequently, I would hold that the Board lacks authority to seal a facility.

Even if the Board had such authority, the Complainants have not made a factual case for a seal. A seal may only be placed upon a finding that an immediate danger exists. A finding implies either an admission or some evidence to support the finding. At the present time Complainants have presented neither. The information Complainants provide appear to be copies of inspection reports and analytical analyses from government agency files. However, there is no indication that the photocopies are authentic or that the information they contain is accurate. In Theresa Castellari, et al, v. John Prior, PCB 86-79 (May 28, 1987), the Board specifically addressed the difficulties posed and the relevant law regarding introduction of documents obtained from Agency files (See pages 12-16). The Board held that exhibits could be admitted as evidence where there was testimony that the exhibits were indeed

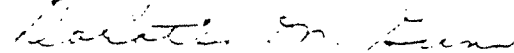
copies of Agency documents (authenticity). The Board held that the information contained in the documents must be afforded lesser weight where the individual who prepared the documents did not testify regarding their contents (accuracy). Today's record supports neither authenticity or accuracy, and thus the factual case has not been made.

Although expressing reservations on the majority rationale for denying the seal, I fully support the expedited consideration. After hearing and adequate factual development, this Board can take appropriate action. In light of the serious nature of the allegations, especially in light of 35 Ill. Adm. Code 721.124, I hope this matter can be brought quickly to a conclusion.



Bill S. Forcade
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Statement was submitted on the 2nd day of September, 1987.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board