

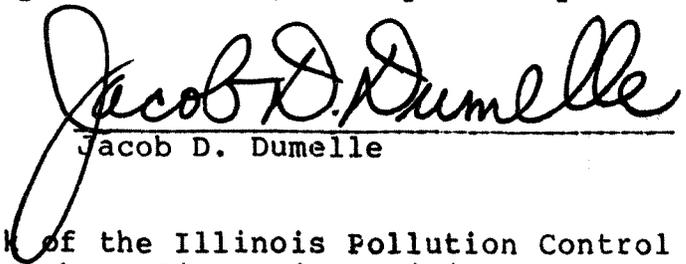
ILLINOIS POLLUTION CONTROL BOARD
October 10, 1985

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 85-101
)
CAPITAL ENGINEERING & MFG. CO.,)
)
Respondent.)

DISSENTING OPINION (by J.D. Dumelle):

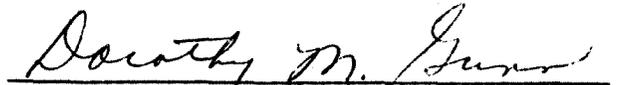
I would not have stricken Capital's fifth affirmative defense, the statute of limitations. The majority's only stated reason for doing so is that "the Board has consistently held that the statute of limitations does not bar enforcement actions." That statement is true, and I have consistently voted with the Board on that issue. Yet, unlike the majority, I would not cut off Capital's ability to make its argument. Board membership changes, court interpretations of law change and Board members may simply change their minds. The majority appears to be saying that never again will it listen to a statute of limitations argument (unless, presumably, the statute is amended), and the Board's previous decisions will remain cast in stone forever. I do not believe the Board should be so rigid, nor do the Board's rules or administrative law require it.

I would have denied the Illinois Environmental Protection Agency's motion in its entirety. Therefore, I respectfully dissent.



Jacob D. Dumelle

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 11th day of October, 1985.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board