

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1985

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R85-14
PUBLIC WATER SUPPLY)
REGULATIONS, 35 ILL. ADM.)
CODE 602.105 AND 602.106)

DISSENTING OPINION (by B. Forcade):

I respectfully dissent from the majority on both a technical and procedural basis. On the technical issue I agree with the dissenting Opinion of Chairman Dumelle that the adopted radium level of 20 pCi/l is too high. I also agree that the practical effect of this "150-day" rule will be to allow long-term radium exposure by individuals residing in housing that is permitted in the 150-day period. Thus, while the duration of the rule is short, its effects may last a lifetime.

My second concern is procedural in nature. I disagree with the concept of adopting one set of numerical contaminant limitations as health-based standards and another set of numerical contaminant limitations which will implement the "self-enforcement" aspects of our environmental protection scheme.

When the Board adopts an environmental standard, compliance with that regulation is largely a matter of individual initiative by the members of the regulated community. When that individual initiative fails, the Environmental Protection Act provides two mechanisms to encourage compliance: Enforcement under Title VIII and Permits under Title X. My primary concern is with Title X, which provides:

TITLE X: PERMITS

Section 39

- a. When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder...

Under this provision, the Agency may not issue to an applicant a new permit or renew an existing permit unless the equipment will

not cause a violation of the Act or Board regulations. This provision encourages "self-enforcement" by members of the regulated community, at least by the time they need a permit. Otherwise, their permit application may be denied and they may be forced to cease operations. Today's action by the Board is directly contrary to the language of Section 39(a) of the Act because it purports to authorize the Agency to issue permits for new water main connections ONLY where the drinking water being transmitted through those connections DOES NOT meet health-based standards adopted by this Board.

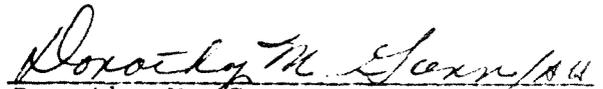
I believe the approach that should have been taken was to re-evaluate the existing drinking water health-based standards. If the scientific information supports relaxation, as I believe it does for fluoride, then the health-based number should be raised. In my opinion, today's action of allowing one set of numbers for "environmental protection" and a different set of numbers for permitting violates Section 39 of the Act and was accurately described by Dr. Marchi as hocus-pocus (R. 449).

The Board's majority has, in today's Order, determined that the new levels present "minimal additional risk of adverse effects on health" and eliminate "major economic and other effects." With such statements now on record as the official Board position, I question the legal ability or willingness of the Board to command compliance with the lower "environmental protection" contaminant limitations if any Title VIII enforcement action is filed.



Bill S. Forcade
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 29th day of August, 1985.



Dorothy M. Gunn
Clerk of the Board