

ILLINOIS POLLUTION CONTROL BOARD
April 3, 1986

CITY OF COLUMBIA, WALTER BYERLEY, JR.,)
BARBARA HEINLEIN, DANIEL HEINLEIN,)
HOMER STEMLER AND LORETTA STEMLER,)
)
Petitioner,)
)
v.) PCB 85-177
)
COUNTY OF ST. CLAIR AND BROWNING-)
FERRIS INDUSTRIES OF ILLINOIS, INC.,)
)
Respondents.)

BROWNING-FERRIS INDUSTRIES OF)
ILLINOIS, INC.,)
)
Petitioner,)
)
v.) PCB 85-220
)
COUNTY OF ST. CLAIR, ILLINOIS,)
)
Respondent,)
and)
)
CITY OF COLUMBIA, JEAN ECKERT,)
MARCELLUS ECKERT, LANNY JACKSON,)
VICKY JACKSON, HARRY RAYMOND,)
PATRICIA RAYMOND, HOMER STEMLER)
AND LORETTA STEMLER,)
)
Intervenors.)

CITY OF COLUMBIA, et al.,)
)
Petitioners,)
)
v.) PCB 85-223
) (Consolidated)
)
COUNTY OF ST. CLAIR AND BROWNING-)
FERRIS INDUSTRIES OF ILLINOIS, INC.,)
)
Respondents.)

DISSENTING OPINION (by J. D. Dumelle):

My reason for dissenting is that I would not have vacated the County decision but would have remanded the matter to the County of St. Clair.

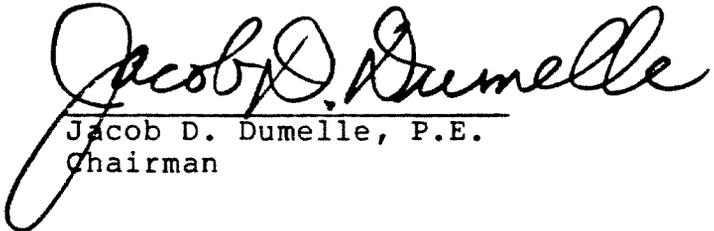
The majority finds a one-day error in filing the application by Browning-Ferris Industries ("BFI") to be controlling under the Kane County decision cited.

The Kane County court was dealing with the landfill siting procedures under P.A. 82-682. Under that law, the public had only 60 days until the hearing, and the comment period was within that period. The present law, P.A. 83-1522, allows at least 90 days until hearing and a 30-day comment period after that. Put another way, the total time for the public to prepare and to participate has been doubled, from 60 days to 120 days. One day out of 120 days is less than 1%. To me that is de minimus.

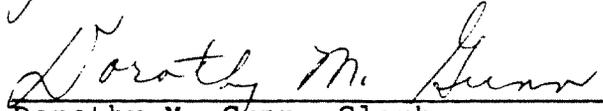
Furthermore, in Kane County the newspaper notice, which was published only one day, rather than the required fourteen days, prior to application failed to include the exact day of filing of the application. That defect was not corrected until nine days after filing. Here, on the other hand, the notice was complete and filed only one day late. The matter should have been remanded, not vacated.

The majority also found a defect in the service of notice to landowners. Yet some of the landowners received timely notice. And all notices were sent registered mail. I would have looked at the place of mailing. If it was in the area then overnight delivery can reasonably be expected. Property owners receiving late notice were probably not at home during the daytime and probably had to accept delivery on Saturday or to call for the registered letter at the post office. Thus, the mailings, while at the absolute last day (June 12), were not defective.

Once the majority vacated the decision it should have gone no further. Yet with no record before it, it proceeds to make "findings" on fundamental fairness (p. 14) or holdings to make "negative findings." How can that be done without a record? I agree with most of the majority holdings but I would have done so in a remand context which would allow findings to be made.


Jacob D. Dumelle, P.E.
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 23rd day of April.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board