

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1990

ST. CLAIR COUNTY,)
)
 Complainant,)
)
 v.) AC 89-18 (Dockets A & B)
) (Administrative Citation)
 J & R LANDFILL, INC.,) County No. 89-1 SC
 An Illinois Corporation,)
)
 Respondent.)

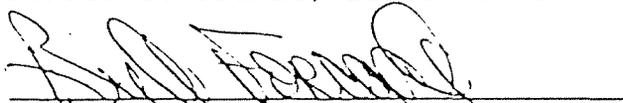
STATEMENT OF DISSENT IN PART (by R.C. Flemal, B. Forcade, and J.T. Meyer):

We dissent from the finding of the majority that the violations recorded in Counts B and D were due to uncontrollable circumstances. In prior analyses of the matter of uncontrollable circumstances (see In the Matter of: Dan Heusinkved, County Clerk, County of Whiteside, State of Illinois, AC 87-25, 85 PCB 247; In the Matter of: Village of Rantoul, AC 87-100, 92 PCB 539), the Board has rightly held the respondent to a rigid burden of proof, pursuant to Ill. Rev. Stat. 1987, Ch. 111 $\frac{1}{2}$, par. 1031.1(d)(2). We believe the majority has departed from that position in today's action.

The majority accepts too uncritically J&R's contention that it was unable to collect litter due to muddy and cold conditions. All landfills are subject to muddy and cold conditions at times, and the mere existence of wet and/or cold conditions is not itself sufficient to constitute an uncontrollable circumstance (See Heusinkved, supra). Critically, it must also be recognized that the period of November 28 to December 2, 1988, during which time the litter undisputably remained uncollected, consisted of five consecutive weekdays, Monday to Friday. J&R simply has not carried its burden of proof of showing that at all times during this extended period it was unable to meet its litter collection obligation due to uncontrollable circumstances.



Ronald C. Flemal, Board Member

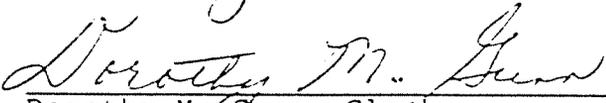


Bill S. Forcade, Board Member



J. Theodore Meyer, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Statement of Dissent in Part was filed on the 17th day of May, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board