

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1988

IN THE MATTER OF:)
)
JOINT PETITION FOR THE CITY OF)
MORTON AND THE ILLINOIS) PCB 85-212
ENVIRONMENTAL PROTECTION AGENCY)
FOR EXCEPTION TO THE COMBINED)
SEWER OVERFLOW REGULATIONS)

CONCURRING OPINION (by J.D. Dumelle):

My reason for concurring lies in the manner of decision and not in its outcome. I feel the public was never informed of this action and thus had no opportunity to comment.

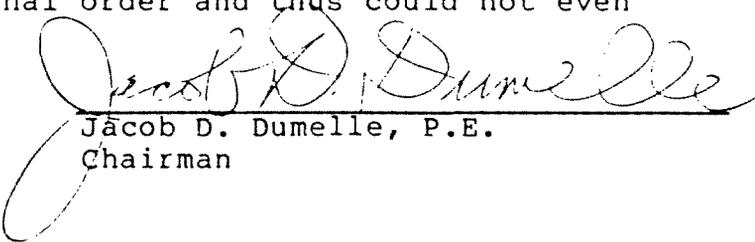
The instant action is based upon an April 11, 1988 motion filed almost two years after the Board's Order of May 9, 1986. Who would ever know of this motion except those served?

The Board's Procedural Rule 103.241(c)2 provides that motions for relief from final orders (which this is, of course) be filed within 12 months of the May 9, 1986 decision. This motion is thus 11 months too late.

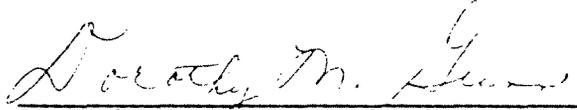
The motion should have been docketed as a "variance from a Board order". If that had been done, then legal notice would have been published in the local area affected. And the new variance case, would have also been noted in the Board's bi-weekly Environmental Register. The public would have been informed.

The counter-argument to this procedure is that a "variance from a Board order" would have to be decided by the Board within 120 days or be granted by operation of law. But since the initial proceeding, PCB 85-212, itself did not have a statutory due date (being a rulemaking) then a variance from a Board order would also not have a due date. One must separate the semantics of "variance" and "variance from a Board order in a rulemaking".

Because the public was excluded from knowing about this motion for relief from final order and thus could not even comment, I concur.


Jacob D. Dumelle, P.E.
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 27th day of May, 1988.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board