

ILLINOIS POLLUTION CONTROL BOARD  
September 17, 1987

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 87-6  
 )  
JAMES PRESSNALL, )  
 )  
Respondent. )

DISSENTING STATEMENT (by B. Forcade):

I respectfully dissent from today's decision. The majority would hold that the General Assembly's intention was to exclude unpermitted landfills from the scope of Section 21(p) of the Illinois Environmental Protection Act ("Act"). This holding unnecessarily eliminates an effective enforcement mechanism. I do not feel that the language of Section 21(p) supports this outcome. Additionally, I am disturbed that the majority, by so holding, dismisses this case on a theory that was not advanced by the respondent and has not been briefed by either party.

Section 21(p) of the Act applies to sanitary landfill operations "required to have a permit." James Pressnall's operation certainly was required to have a permit, in order to comply with the Act and regulations that prohibit open dumping and conducting disposal operations without a permit. The majority effectively rewrites Section 21(p) so that it only applies to those operations that "in fact, have a permit."

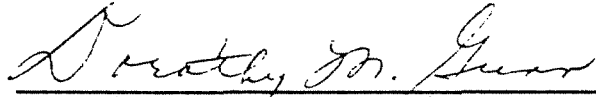
The General Assembly's intent on the scope of applicability of the administrative citation mechanism is further reflected by the specific types of violations enumerated in Section 21(p). Section 21(p)(7) allows the Illinois Environmental Protection Agency ("Agency") to issue administrative citations for "acceptance of wastes without necessary permits." It would seem to me that James Pressnall is charged with acceptance of wastes without the required Section 21(d) permit. Therefore, the charge is certainly appropriate under Section 21(p)(7).

I find nothing in the statutory language to preclude issuance of an administrative citation against an unpermitted landfill operation and Section 21(p)(7) seems to specifically authorize it. Accordingly, I dissent.



Bill S. Forcade  
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Statement was submitted on the 22<sup>nd</sup> day of September, 1987.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board