

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1985

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-61  
 )  
MISSOURI PORTLAND )  
CEMENT COMPANY, )  
 )  
Respondent. )

DISSENTING OPINION (by R.C. Flemal):

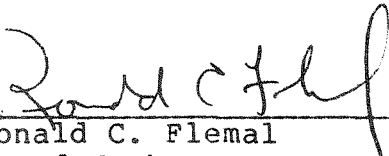
I am uncomfortable with the outcome of this matter, and find it necessary to dissent from the majority's Order. This uncomfortableness stems primarily from the fact that the Board is today rejecting, for the second time, a stipulation and proposal for settlement filed by two parties who have worked diligently and in good faith to resolve the contested matter between them, and have done so within the constraints imposed on them by the Board.

The first stipulation and proposal for settlement was rejected by the Board because the one violation admitted to was statutorily insufficient to support the stipulated \$20,000 penalty. The parties went back and remedied that deficiency, but are now being sent away by the Board a second time. The deficiency this time is not statutory in nature, however. It is simply that the parties have proposed a remedy different than that normally encountered by the Board.

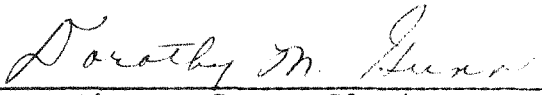
The revised stipulation and proposal for settlement asks the Board to assume the role of final arbiter of any disputes arising out of the implementation of programs imposed on Missouri Portland by the settlement agreement. For whatever reasons they may have had for so doing, the parties did not outline the specifics of these programs, but rather only that the programs are to be submitted to the Agency within 30 days after approval of the settlement agreement by the Board, and that the Agency may reject or modify the programs.

I would prefer to not second guess the parties as to why they could not present the specifics of these programs prior to submitting their proposal for settlement to the Board. Rather, I would retain jurisdiction in this matter because the role the parties envisioned for the Board seems an appropriate one. Moreover, it is preferable to retain matters such as these before the Board, rather than before the Circuit Courts or professional arbitrators, neither of which are necessarily knowledgeable regarding the specific environmental issues of this matter.

For these reasons I dissent.

  
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Ronald C. Flemal  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 17<sup>th</sup> day of October, 1985.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board