

ILLINOIS POLLUTION CONTROL BOARD
February 22, 1984

WASTE MANAGEMENT OF ILLINOIS,)
)
 Petitioner,)
)
 v.) PCB 82-55
)
BOARD OF SUPERVISORS OF TAZEWELL)
COUNTY,)
)
 Respondent.)

CONCURRING OPINION (by B. Forcade, J. Marlin, and J.D. Dumelle):

While the Board has unanimously rejected the settlement agreement, a division exists on the appropriate interpretation of criterion 2 of Section 39.2 of the Environmental Protection Act ("Act"). Therefore a concurring opinion is appropriate.

The clear language of criterion 2 allows local governments to consider the design, location, and operational plan of regional pollution control facilities. Local governments may reject, accept, or impose conditions based on these "highly technical" factor's impact on public health, safety and welfare. The majority of this Board would negate that clear language, allowing local governments to consider only visual aesthetics, odor, noise, and so on. Three members of this Board and the only two appellate courts to consider the issue disagree.

The majority requests early judicial review of this issue by the Supreme Court. None of the traditional reasons for Supreme Court review are asserted, i.e., conflict among the appellate court opinions. The sole basis for that request is that a majority of this Board, an inferior tribunal, disagrees with the established law in Illinois as expressed by two separate appellate courts. As a matter of good government and in the public interest, this Board's Opinions should follow the case law in Illinois, not contest it.

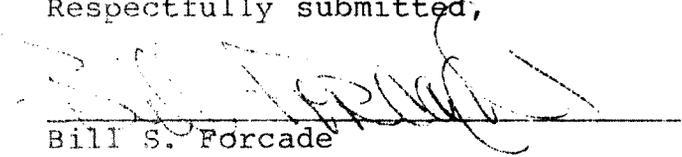
In an effort to encourage Supreme Court review, and influence the decision, the majority asserts an argument of potential conflicts between conditions imposed by Tazewell County and conditions imposed by the Illinois Environmental Protection Agency ("Agency"). It should be noted that under Section 39.2 (e) of the Act, local governments may not impose conditions that are inconsistent with this Board's regulations. Similar restrictions apply to Agency issued permit conditions under Section 39(a) and (d) of the Act. Thus, the conflict would occur only where three factors are present:

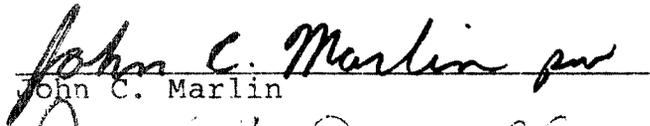
1. Both the Agency and the local government establish conditions regarding a specific aspect of the facility;
2. Both the Agency condition and local government condition are consistent with relevant laws; and
3. The conditions of the Agency and local government are mutually exclusive. One condition being more stringent than another does not create a conflict.

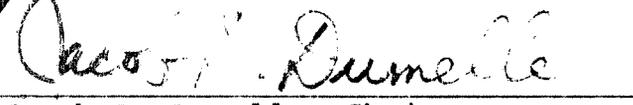
If this highly unlikely situation occurs, I have no doubt this Board could fashion a remedy to resolve the conflict, if it wished to do so.

In all other respects, we agree with the majority opinion.

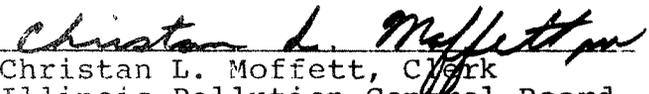
Respectfully submitted,


 Bill S. Forcade


 John C. Marlin


 Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 1st day of March, 1984.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board