

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1981

DONALD J. HAMMAN,)
)
) Petitioner,)
)
) v.) PCB 80-153
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)


DISSENTING OPINION (by I. Goodman):

Although today's majority Opinion considers the issues of this case in much greater detail than its prior Opinion, the holding and the end result remains the same: the Agency may not deny a permit for the development or operation of a sanitary landfill even if the access roads to the site are admittedly inadequate and the petitioner is unable to prove that he is able to correct the situation.

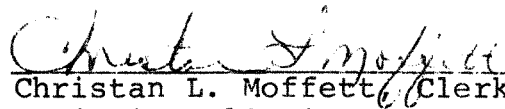
Today's majority Opinion strains to refine the issue to the precise wording of the Agency's denial, citing an Agency reference to the Petitioner's lack of a written agreement with the Township Road Commissioner to allow the access roads to the site to be upgraded. At great length, the Opinion comments about the rights and duties of the Township Road Commissioner with respect to Hamman's site and its access roads. I do not believe that the Agency or this Board should even consider this question, let alone base a decision upon the results of such consideration. The majority Opinion states on page 11, "Denial of the Hamman permit for failure of a local official, for whatever reason, to agree to do that which he is empowered to do, and has the duty to do -- improve township roads -- at the cost of the permit applicant was improper." The majority misinterprets the Agency's denial. Denial was based upon the inability of the Petitioner to prove to the Agency that the access roads to his proposed landfill would ever be upgraded to a suitable condition. That the Agency demanded a written agreement with the Township Road Commissioner as the means of such proof is not the question.

After cutting away all of the extraneous issues discussed so carefully in today's Opinion, the results remain the same. The Board is ordering the Agency to issue a permit for a proposed landfill with absolutely no assurance that the access roads to the facility will ever be adequate to convey the refuse through the surrounding community to the site in a safe

and reasonable manner. Regardless of the reasons for the lack of such assurance, I do not believe the site should be permitted until that issue is resolved. I, therefore, respectfully dissent from today's decision.


 Irvin G. Goodman, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Dissenting Opinion was filed on the 20th day of November, 1981.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board