

ILLINOIS POLLUTION CONTROL BOARD  
August 10, 1984

WASTE MANAGEMENT, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-45
	)	84-61
ILLINOIS ENVIRONMENTAL	)	84-68
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

CONCURRING OPINION (by J. Anderson):

Mr. Forcade's concurring statement points out a problem that may arise by separating out and ruling on matters that are not clearly distinguishable, at least not at this time. I believe the Board, in its Order, has created another potential problem by unnecessarily categorizing without knowing the circumstances.

The Board held that "the factual basis for Agency decision-making on permits does not result in an expectation of confidentiality." The Board need not have attempted to separate out "factual" in its ruling. The Board found no reason to reverse the decision of the hearing officer, and it should have avoided unnecessary conjecture.

We do not know how, or if, the "factual" basis may prove to be at issue here, or, for example, whether this basis may have a legal component that may not be sufficient to result in an expectation of confidentiality in the pre-decisional setting. In our desire to avoid an overly-broad construction, I am concerned that we are inviting an overly-narrow construction in what may later prove to be a far more complex situation than we can hypothesize at this time.

During the time this case is under the purview of the hearing officer the Board does not necessarily have before it all the facts which the hearing officer has before him. Any holdings or findings made by the Board at such a time should be limited in specificity to the information before the Board. I would have preferred, at the discovery stage, to have avoided the possibility of giving the hearing officer unintended problems.

For these reasons, I concur.

  
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Joan G. Anderson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 30th day of August, 1984.

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