

ILLINOIS POLLUTION CONTROL BOARD
October 23, 1986

IN THE MATTER OF:)
)
HAZARDOUS WASTE PROHIBITIONS) R 86-9
)

DISSENTING OPINION (by B. Forcade):

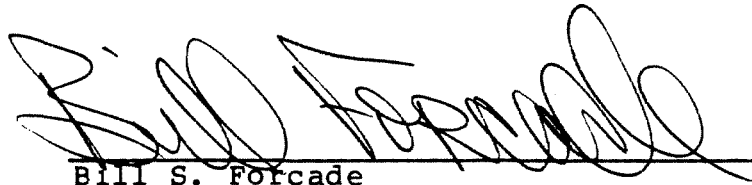
I dissent from today's emergency rule.

My first area of disagreement with the majority is the lack of an emergency to support this rulemaking action. My dissenting Opinion of October 2, 1986, articulates my views on this issue and will not be repeated here.

My second area of disagreement is the large number of exemptions and exclusions which the majority has adopted. These exceptions and exclusions (Section 709.110(b) and Section 709.202) significantly reduce the scope of the hazardous waste land disposal prohibitions of Section 39(h) of the Illinois Environmental Protection Act. My objections to this reduction in scope were expressed in my dissenting Opinions of June 11, 1986 (pp. 1-3) and October 2, 1986 (p. 2). Since those dissents were written, the majority has further expanded the list of materials exempted from the Section 39(h) coverage to include voluntary cleanup and spill responses by responsible parties (Section 709.202(c)). I continue to believe that the scope of Section 39(h) coverage should be determined by the character of the waste (is it hazardous or not), rather than by the identity or intentions of the generator.


In Section 729.102, the majority has revived the idea that wastestreams "cease to exist." My objections to this concept were articulated in my June 11, dissent at page 3.

I have a significant problem with the majority's language in Section 709.106, governing deemed-issued permits. This section is a blatant attempt to extend the statutory deadline of Section 39(h) from January 1, 1987, until mid-February, 1987. Under this section, an application filed before November 15, 1986, results in a "deemed issued" authorization to continue land disposal. That "deemed issued" authorization would continue for 90 days or until Agency action. Thus, if the Agency takes the full 90 days for review, the hazardous waste could be deposited in a waste site until mid-February, 1987, without "specific authorization." This, I believe, clearly violates the statutory deadline, which prohibits such action after January 1, 1987.



Bill S. Forcade
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 3rd day of November, 1986.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board