

ILLINOIS POLLUTION CONTROL BOARD
August 19, 1999

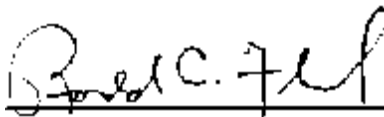
PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-103
) (Enforcement - Land, Water)
STATE OIL COMPANY, WILLIAM)
ANEST f/d/b/a S & S PETROLEUM)
PRODUCTS, PETER ANEST f/d/b/a S & S)
PETROLEUM PRODUCTS, CHARLES)
ABRAHAM, JOSEPHINE ABRAHAM, and)
MILSTREAM SERVICES, INC.,)
)
Respondents.)

DISSENTING OPINION (by R.C. Flemal):

I respectfully dissent from the majority's order delivered today because I believe that the Board does not have authority to hear third-party cost recovery cases. As a creature of statute, the Board has no authority except that expressly provided by statute. See Village of Lombard v. Pollution Control Board, 66 Ill. 2d 503, 363 N.E.2d 814 (1977), ("An administrative Agency, such as the Pollution Control Board, has no greater powers than those conferred upon it by the legislative enactment creating it."). Neither the Environmental Protection Act, nor any other statute, grants authority to the Board to hear third-party cost recovery cases. Absent any explicit authority, no authority exists.

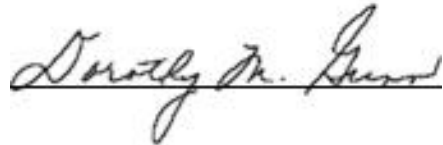
That portion of the cross-complaint that seeks recovery of remediation costs accordingly should have been dismissed as frivolous, because the Board does not have the authority to grant the relief requested.

For this reason, I dissent.



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 19th day of August 1999.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board