

ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 90-87
)	(Enforcement)
JERNBERG INDUSTRIES, INC.,)	
a Delaware corporation,)	
)	
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation in this case.

Neither the Illinois Environmental Protection Agency (Agency) nor the Attorney General have articulated any standards as to what factors should be considered when negotiating a fine to be imposed pursuant to a settlement agreement. Additionally, although the proposed settlement agreement states that Jernberg's noncompliance was economically beneficial in that it operated its unpermitted equipment without the delay of applying to and waiting for the Agency to issue permits, there is not any specific information on the amount of that economic benefit. Section 33(c) of the Environmental Protection Act specifically requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the amount of the economic benefit, not just a statement that that an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$4,500 even comes close to any savings realized by Jernberg.

Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against Jernberg. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f). I am pleased that the Attorney General is beginning to bring enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at a minimum, recognize that the Board could award costs and reasonable fees.

For these reasons, I dissent.

J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the _____ day of _____, 1990.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board