

ILLINOIS POLLUTION CONTROL BOARD
February 4, 1988

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Petitioner,)
)
v.) PCB 86-108
)
JOLIET SAND AND GRAVEL COMPANY,)
)
Respondent.)

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation and respondent Joliet Sand and Gravel's "commitment to make contribution to the Illinois Environmental Trust Fund."

No standards have been promulgated by the Illinois Environmental Protection Agency (Agency), the Attorney General, or this Board as to what factors should be considered when negotiating and accepting a penalty (in this case, a "contribution") to be imposed pursuant to a settlement agreement. If this enforcement action had been brought by a State's Attorney or by the Attorney General in the name of the people of the State of Illinois, respondent could have been assessed costs and reasonable attorney's fees. Ill. Rev. Stat. 1985, ch. 111¹/₂, par 1042(f). I am concerned that the instant "contribution" may not even cover the Agency's costs and fees.

Additionally, the proposed settlement included no information on the amount of money respondent may have saved by not complying with the Act and the Board's regulations. I must point out that Section 33(c) of the Environmental Protection Act was recently amended to provide that in making an order or determination, the Board shall consider "any economic benefits accrued by a noncomplying pollution source because of its delay in compliance with pollution control requirements." P.A. 85-0358. That amendment was effective on September 11, 1987 - well before the date of the instant settlement.

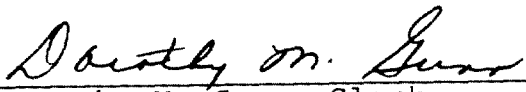
Finally, I am not comfortable with the characterization of the payment in this case as a "contribution". I realize that the settlement agreement makes no finding of violation of the Act, but I do not feel that the word "contribution", with its connotations of a voluntary gift, is a proper part of a settlement agreement of a case which alleges the operation of a facility without a permit.

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 10th day of February, 1988.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board