

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2001

JERSEY SANITATION CORPORATION,)	
an Illinois corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 00-82
)	(Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

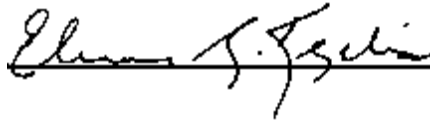
DISSENTING OPINION (by E.Z. Kezelis):

I respectfully dissent. I believe the majority has erred by rejecting Board precedent to reach its decision. In permit appeals such as this, the Board has generally adhered to the principle that a condition previously imposed in a prior permit and not appealed to the Board cannot thereafter be appealed in a subsequent permit. Panhandle Eastern Pipe Line Company v. IEPA (January 21, 1999), PCB 98-102, slip op. at 13, *aff'd*, Panhandle Eastern Pipe Line Company v. IEPA, 314 Ill. App. 3d 296, 734 N.E.2d 18 (4th Dist. 2000); Bradd v. IEPA (May 9, 1991), PCB 90-173.

I believe Panhandle and Bradd represent strong precedent that should be followed here. While the majority attempts to distinguish them on the grounds that different types of permits are involved here, I find that analysis to be flawed. The rationale underlying Panhandle and Bradd does not depend upon the nature of the permits at issue. Instead, these cases stand for the propositions that it is sound public policy to accept administrative agency decisions as final, absent timely appeals, and that it is not sound public policy to encourage permit applicants to delay appealing conditions until subsequent appeal possibilities present themselves.

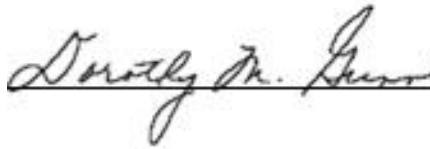
Accordingly, I would find Jersey Sanitation waived any objection to conditions C.1, C.2, C.3, C.4 and C.8, because each of these conditions was imposed in the prior permit issued to Jersey Sanitation, and Jersey Sanitation appealed none of them. Given those circumstances, I would therefore, deny Jersey Sanitation's motion for summary judgment as to these conditions, and instead, grant the Agency's cross-motion for summary judgment.

For these reasons, I respectfully dissent from today's majority opinion.

A handwritten signature in cursive script, reading "Elena Z. Kezelis", written over a horizontal line.

Elena Z. Kezelis
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was adopted on the 25th day of June 2001.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board