

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 86-210
)	(Enforcement)
HILLVIEW FARMS FERTILIZERS, INC.,)	
an Illinois corporation, and)	
ARNOLD N. MAY, individually and)	
as president of HILLVIEW FARMS)	
FERTILIZERS, INC.,)	
)	
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer):

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

Although the proposed settlement agreement states that respondent's noncompliance was economically beneficial in that it was able to continue to accept sludge (and the resulting revenues) when the permitted facility was full, 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 an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$5,000 even comes close to any savings realized by respondent.

I note that Mr. May is individually liable for the agreed-to penalty. I support the action proceeding against the individual as well as the dissolved corporation.

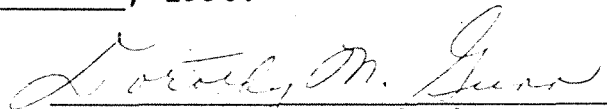
Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against respondent. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f). I am pleased that the Attorney General is beginning 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 31st day of August, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board