

ILLINOIS POLLUTION CONTROL BOARD  
May 6, 2004

PEOPLE OF THE STATE OF ILLINOIS,    )  
  )  
          Complainant,                                )  
  )  
          v.    )     PCB 02-177  
  )     (Enforcement – Land, Water)  
JOHN PRIOR d/b/a PRIOR OIL COMPANY    )  
and JAMES MEZO d/b/a MEZO OIL         )  
COMPANY,    )  
  )  
          Respondents.                             )

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent with the majority opinion. Although I agree with the Board that the respondents violated the Illinois Environmental Protection Act (Act) (415 ILCS 5 (2002)) and Board regulations, I do not agree with the imposition of a \$300,000 civil penalty on John Prior d/b/a Prior Oil Company (Prior).

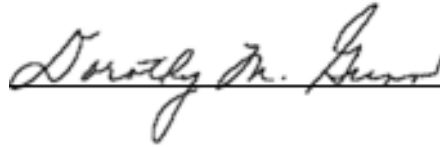
While I strongly concur that based on the factors of Section 33(c) of the Act (415 ILCS 5/33(c) (2002)), civil penalties against Prior and Mezo are warranted, after considering the Section 42(h) factors (415 ILCS 5/42(h) (2002)), I think the \$300,000 civil penalty imposed on Prior is excessive. Of specific note, is the second 42(h) factor – the presence or absence of due diligence. I think it is critical that Prior had remediated the site and submitted compliance documentation prior to the filing of the complaint. Consequently, I would weigh this factor in favor of Prior and impose a civil penalty more in accordance with the penalty sought by the People of the State of Illinois.

For these reasons, I respectfully dissent.



Thomas E. Johnson  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on May 11, 2004.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board