

ILLINOIS POLLUTION CONTROL BOARD
May 19, 1994

CONCERNED CITIZENS FOR A	)	
BETTER ENVIRONMENT,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 94-44
	)	(Landfill Siting Appeal)
CITY OF HAVANA and	)	
SOUTHWEST ENERGY CORPORATION,	)	
	)	
Respondents.	)	

CONCURRING OPINION (by J. Theodore Meyer):

I agree with the majority that, under existing law, the applicant's sponsorship of the tour of the Semass plant was fundamentally unfair. However, I concur to express my continuing discomfort with review of the local decision using an adjudicatory, rather than a legislative, standard.

I recognize that the appellate courts have held that the local decisionmaking process pursuant to Section 39.2 of the Environmental Protection Act (415 ILCS 5/39.2 (1992)) must be reviewed as an adjudicatory process, rather than a legislative or rulemaking process. (E & E Hauling, Inc. v. Pollution Control Board (2d Dist. 1983), 116 Ill.App.3d 586, 451 N.E.2d 555, 564-566, aff'd in part (1985), 107 Ill.2d 33, 481 N.E.2d 664; Tate v. Macon County Board (4th Dist. 1989), 188 Ill.App.3d 994, 544 N.E.2d 1176.) However, I believe that the application of standards of adjudicatory decisionmaking, rather than legislative standards, is unfair to local decisionmakers. Local elected officials are almost always asked to wear a legislative "hat" when taking official actions. To ask elected officials to put on an adjudicatory "hat" and act like judges when reviewing a siting application places an unnecessary burden on both the individual decisionmaker and on the siting process.

Furthermore, I believe that applying standards of adjudicatory decisionmaking to the siting process puts unnecessary limits on the information which forms the basis for a siting decision. For example, I believe that touring an operating facility, such as the Semass facility, which is similar to the proposed facility is one of the best ways for decisionmakers to learn about the proposed facility. It is always easier to understand a process after actually viewing that process in operation.

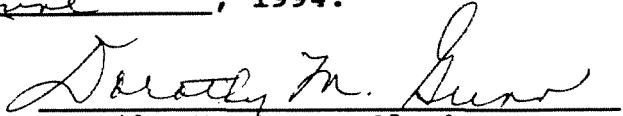
In sum, I recognize that case law developed by the appellate court requires the application of adjudicatory standards of due process when reviewing the fundamental fairness of a local siting proceeding. However, I believe that the process would function

more smoothly, and decisions would be based on better information, if the local siting process were considered a legislative function.

For these reasons, I concur.


J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 3rd day of June, 1994.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board