

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1989

CHRISTIAN COUNTY LANDFILL, INC.,)
)
) Petitioner,)
) V.) PCB 89-92
)
) CHRISTIAN COUNTY BOARD,)
)
) Respondent.)

DISSENTING OPINION (by J.D. Dumelle):

I dissent from the Board's Opinion and Order dated October 18, 1989, in this proceeding. Although I agree in general with the Board's analysis as to whether each of the contested conditions are reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act (Act), I do not agree with the Board's ultimate handling of the proceeding. I believe that this proceeding should be remanded to Christian County so that it may reevaluate the application for site location approval in light of the Board's reversal of the conditions.

Section 39.2(e) of the Act states in pertinent part:

***In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board. *** (Emphasis added).

In granting approval of Christian County Landfill's application, the Christian County Board imposed conditions which it stated it believes are reasonable and necessary to accomplish the purposes of Section 39.2 of the Act. The language "in granting approval" in Section 39.2(e) indicates to me that when a county board or governing body of a municipality grants SB172 approval with conditions, those conditions become part and parcel of its approval. Although the County's Resolution in this case addresses the criteria and the conditions separately, I believe that the imposition of these conditions should be considered an essential ingredient of the approval, not a separable aspect of the approval as the majority apparently believes.

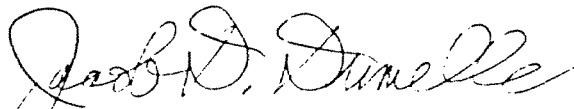
In fact, I believe that the Christian County Board might not have granted its approval but for its belief that the conditions were reasonable and necessary and would be enforceable. It is entirely possible that the County's belief, although unstated, was that so long as these conditions are complied with, the criteria

will be satisfied. And conversely, the County may have believed that if the conditions are not complied with, the criteria will not be satisfied. To allow for this interpretation, I would have remanded the proceeding to the County for a reevaluation of the record in light of the Board's holdings on the contested conditions.

Moreover, in simply striking the conditions and not remanding, the majority denies to Christian County the opportunity to perfect the conditions which it intended to accompany the approval. The Christian County Board apparently had concerns which it intended to remedy by way of conditional approval. Clearly, Section 39.2(e) of the Act permits this manner of remedying the decisionmaker's concerns. While it may be true that Christian County has not drafted its conditions as artfully as it could have, it is possible that the County's concerns, if drafted more clearly, would be reasonable and necessary. I do not believe it fair or just that Christian County's concerns should be ignored so completely simply because the conditions were incorrectly worded. I believe that Christian County should have the opportunity to perfect the intent of its conditions consistent with the Board's Order.

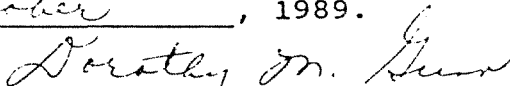
Finally, I am concerned that today's majority's holding will have a chilling effect on the imposition of conditions in future SB172 cases. The majority's decision sends a message to all county boards and governing bodies of municipalities that they get one attempt at imposing conditions and that if that attempt fails for any reason they are without recourse--approval is granted unconditionally. I fear that rather than approve site location suitability approval with conditions reasonable and necessary to accomplish the purposes of Section 39.2, local decisionmakers will opt for the safer course and disapprove the application outright. If this happens, the goal of Section 39.2, i.e., to site new regional pollution control facilities, is frustrated.

I believe that the appropriate course of action in this case is to remand this proceeding to the County for further action consistent with the Board's review of each of the conditions. For these reasons, I dissent.



Jacob D. Dumelle
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 19th day of October, 1989.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board