

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1993

ALICE ZEMAN, <u>et al.</u> ,)	
)	
Petitioners,)	
)	
v.)	PCB 92-174
)	(Landfill Siting Review)
)	(Consolidated with PCB 92-177)
VILLAGE OF SUMMIT and WEST)	
SUBURBAN RECYCLING AND)	
ENERGY CENTER, INC.)	
)	
Respondents.)	

DONNA QUILTY,)	
)	
Petitioner,)	
)	
v.)	PCB 92-177
)	(Landfill Siting Review)
)	(Consolidated with PCB 92-174)
VILLAGE OF SUMMIT and WEST)	
SUBURBAN RECYCLING AND)	
ENERGY CENTER, INC.)	
)	
Respondents.)	

CONCURRING OPINION (by J. Theodore Meyer):

I agree with the majority that Summit's failure to allow interested persons to view and copy the application for siting approval denied those persons fundamental fairness. Section 39.2(c) of the Environmental Protection Act clearly requires that all documents on file with the village clerk must be available for public inspection and copying, upon payment of the actual costs of reproduction. (415 ILCS 5/39.2(c).) However, because fundamental fairness was abridged even before the hearing began, I believe that the Board's inquiry should have ended there. All of the subsequent discussion of the local hearing, and the finding that fundamental fairness was denied at that hearing, is simply dicta. The majority has created a thicket of dicta, and it is unfortunately inevitable that this dicta will be cited as authority at some time in the future. I believe that we should have ended our inquiry into this case as soon as we found the unavailability of the application to be fundamentally unfair.

In addition, I am bothered by the implication that the applicant will be denied any appeal of the Board's decision at this time, since the Board has ordered a remand. I do not believe that the Board can decide whether an order is appealable. That decision belongs only to the appellate court.

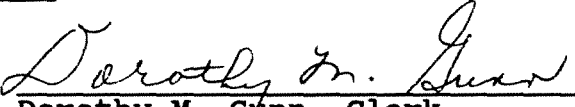
0139-0587

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 concurrence was filed on the 3rd day of March, 1993.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0139-0588