


ILLINOIS POLLUTION CONTROL BOARD
September 12, 1991

EARL R. BRADD, as owner of)
the BRADD SANITARY LANDFILL,)
)
Petitioner,)
)
v.) PCB 90-173
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

CONCURRING OPINION (by B. Forcade):

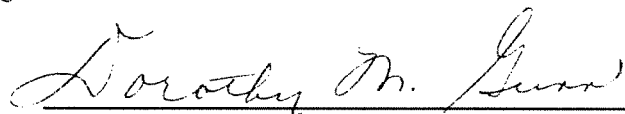
I agree with the outcome, but feel additional discussion is appropriate. The Board Opinion and Order of May 9, 1991, as modified by Order of July 25, 1991, reversed the Agency denial reasons 2, 3, 4, and 5, and remanded reason 1 to the Agency for additional review. A similar situation was reviewed by the Fifth District in IEPA v. PCB and Centralia Environmental Service, No. 5-91-0099 (Order of June 14, 1991). The Court stated, "That it further appears that the Board's denial of some of the Agency's reasons for rejecting the permit application is not precedential or law of the case, and the Agency would not be estopped from using those reasons again because the Board did deny the permit application in this case.... The denial of some of the Agency reasons was, in effect, obiter dicta. The Board's rejection of some of the Agency's reasons was therefore not precedential or law of the case."

It would appear to me that on remand the Agency is free to reevaluate and reassert denial reasons 2, 3, 4, and 5.



Bill S. Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 20th day of September, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board