

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1991

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 90-112
) (Enforcement)
)
 CHICAGO HEIGHTS REFUSE DEPOT, INC.,)
)
 Respondent.)

DISSENTING OPINION (by J.D. Dumelle);

My dissent is based upon two points. First, Count I alleges that this condition was violated:

...All monitoring points shall be maintained such that a sample may be obtained.

The key word here is "maintained". The witnesses for the respondent pointed out under oath that the groundwater wells were not clogged with rocks and were thus "maintained" correctly. The complainant is obviously construing the word "maintained" to mean "construct" or to mean "construct to a water bearing depth".

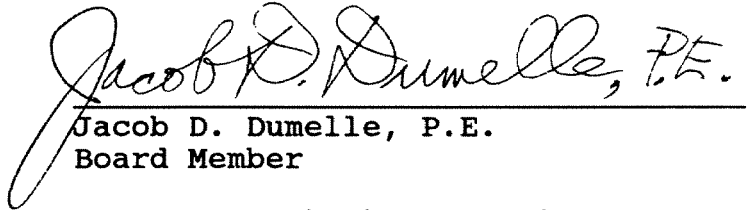
One has to use plain meanings of words. The meaning of "the bridge was maintained" is far different from the meaning of "the bridge was constructed". And no one would give both meanings to either operative word used alone.

The second point is that the IEPA according to sworn testimony, wanted the respondents groundwater wells to be sunk deeper in order to monitor the adjacent abandoned Fitz-Mar landfill site. See R. 141 in the December 17, 1990 hearing. Collin W. Gray, the respondent's witness, testified that this was stated to him by J. Stephen Van Hook, the IEPA official concerned with monitoring at this site. No refutation of Van Hook's alleged statement appears in the record.

Thus we have a permit condition which was given overly broad meaning and an unrefuted sworn statement that IEPA was in fact trying to monitor the Fitz-Mar site's groundwater when demanding that the respondent's wells be deepened.

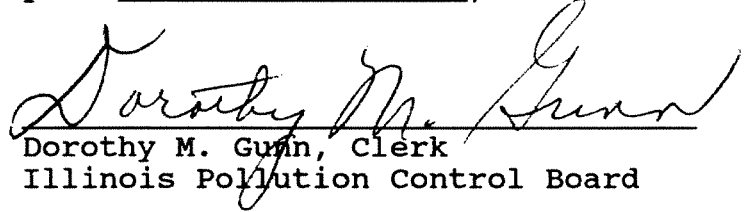
The complainant did not carry its burden on this charge and thus I dissent. Please note that the environment is not at risk because the respondent will have to satisfy the closure and post-

closure regulations of the Board by filing an acceptable plan as a permit modification.



Jacob D. Dumelle, P.E.
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above ~~Dissenting~~ Opinion was submitted on the 24th day of October, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board