

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1990

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB '90-115
)	(Enforcement)
EXCELLO COLOR AND CHEMICAL)	
COMPANY, an Illinois)	
corporation,)	
)	
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the settlement stipulation in this case.

Although the proposed settlement agreement states that respondent's noncompliance was economically beneficial in that it operated its unpermitted equipment since 1972 without the delay of applying to and waiting for the Agency to issue permits, there is not any specific information on the amount of that economic benefit. Section 33(c) of the Environmental Protection Act (and new Section 42(h)(3), as contained in P.A. 86-1363, effective September 7, 1990) specifically requires the Board to consider any economic benefits accrued by noncompliance. I believe that this provision contemplates a consideration of the amount of the full economic benefit, not just a statement that an economic benefit was realized. Without more specific information, it is impossible to know if the penalty of \$10,000 even comes close to any savings realized by respondent.

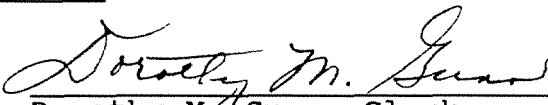
Finally, I am frustrated that, although this case was brought in the name of the people of the State of Illinois, there is no recognition that costs and fees could have been assessed against respondent. Ill.Rev.Stat.1989, ch. 111 1/2, par. 1042(f). I am pleased that the Attorney General is beginning to bring enforcement cases in the name of the People, but I believe that settlement agreements in such cases should, at a minimum, recognize that the Board could award costs and reasonable fees.

For these reasons, I dissent.



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 15th day of October, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board