

ILLINOIS POLLUTION CONTROL BOARD  
April 20, 1995

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 92-164  
 ) (Enforcement)  
 BERNIECE KERSHAW AND DARWIN DALE )  
 KERSHAW, d/b/a KERSHAW MOBILE )  
 HOME PARK, )  
 )  
 Respondents. )

DISSENTING OPINION (by J. Theodore Meyer):

I respectfully dissent from the majority's order which assesses respondents' penalty at \$35,190.69. I find no demonstrated reason for the drastic reduction from the Illinois Attorney General's suggested penalty of \$250,000.


In making orders and determining an appropriate civil penalty in a given case, the Board is to consider various factors, including, but not limited to, those outlined in Section 33(c) and 42(h) of the Act. Generally, high penalties are imposed and upheld when a violator demonstrates a lack of good faith efforts at compliance; disregards the negative impact on the environment caused by non-compliance; and, enjoys economic gains by delaying compliance. See Wasteland, Inc. v. Illinois Pollution Control Board, 118 Ill.App.3d 1041, 456 N.E.2d 964 (3rd Dist. 1983). See also, Standard Scrap Metal Company v. Pollution Control Board, 142, Ill.App.3d 655, 491 N.E.2d 1251 (1st Dist. 1986). In fact, since 1970, amendments to Section 33(c) are in the direction of increasing the amount of a penalty, an indication of the legislative intent to favor higher penalties which aid enforcement of the Act and deter violators and others from future non-compliance.

In the instant case, respondents demonstrated an outrageous lack of due diligence and good faith. For over 14 years respondents wilfully caused serious water pollution and violated effluent standards, despite the availability of technically practicable and economically reasonable means of compliance. (complainant's Motion for Summary Judgment, p.24). Attempts by the Illinois Environmental Protection Agency and the Illinois Attorney General to seek compliance from respondents were utterly ignored. (Id.) This callous behavior is a clear demonstration of respondents' disregard for negative impacts on humans and the environment caused by dumping untreated sewage into the waterways. Moreover, respondents reaped substantial economic savings from their 14-year history of non-compliance, savings

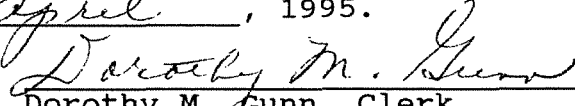
which accrued at the expense of the environment, and which occurred despite their ability to pay for improvements to cure the violations (complainant's Brief in Support of Penalty Request, p.36-38).

Although a \$250,000 penalty is unusual in Board decisions, I believe that the severity of the penalty should bear some relationship to the seriousness of the violation. Southern Illinois Asphalt Company, Inc. v. Pollution Control Board, 60 Ill.2d 204, 326 N.E.2d 406 (Ill. 1975). In addition, a penalty should be greater than the economic benefit enjoyed by the violators. Wasteland, Inc. v. Illinois Pollution Control Board, 118 Ill.App.3d 1041, 456 N.E.2d 964, 976. The economic benefit has been estimated at \$118,980.40 (complainant's Brief in Support of Penalty Request, p.49). Therefore, the imposition of a six-figure penalty over that amount is warranted, given the duration and severity of the violations, respondents' lack of due diligence and good faith, and the need to deter respondents and others who may be tempted to disregard the Illinois Environmental Protection Act.

For these reasons, I respectfully dissent.

  
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 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 27<sup>th</sup> day of April, 1995.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board