

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1992

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	AC 92-5
)	Dockets A & B
v.)	(Administrative Citation)
)	(IEPA No. 63-92-AC)
RONALD D. RAWE and)	
RETHA M. RAWE,)	
)	
Respondents.)	

CONCURRING OPINION (by J. C. Marlin):

In a strictly legal context, the Board has correctly decided this case. However, as evidenced by the number of dissents and concurrences, the case raises troubling questions in the policy arena.

The administrative citation (AC) statute is designed to quickly handle specific violations at landfills and open dumps. The listed violations are generally believed to be straight forward and require little effort to verify. Accordingly, the statute provides that on appeal the issues before the Board are (1) did the violation occur and (2) if so, was it due to uncontrollable circumstances. There is no specific provision in the statute for the Board to exercise judgement in matters relating to mitigating circumstances and size of penalty.

In the instant case, two sites with obvious open dumps were inspected by the Agency and an administrative warning notice (AWN) was issued. Subsequently, an AC was issued following another inspection. During this final inspection, a third site was "discovered" containing between three and five mostly-buried cars in a ravine. Testimony established the cars had been placed there by the respondent's father in the late 1960's to control erosion. It is also worth noting that the Rawes were never notified of site three prior to the AC issuing, since it was not included in the warning notice. The AWN was issued against sites on land they claim to neither own or exert control over.

At hearing the issue of ownership and control of sites one and two was unresolved, leaving site three as the sole remaining viable "count" in the AC.

Several questions are raised:

The first is whether there would be any regulatory interest in a few partially buried cars if the obvious problems at sites one and two had not existed.

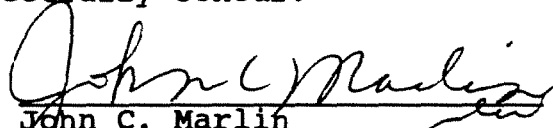
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Second, what is a reasonable "clean up" option for this situation? The ravine is now so overgrown that the inspector did not walk up to it. The usual options of covering or removal are likely to completely destabilize the ravine, kill established vegetation and recreate the erosion problem.


Then there are the policy issues. Thousands of similar sites exist in Illinois today as this erosion control practice was widespread in the past (though it is unacceptable today). In the face of other priorities, are cars in such ravines worthy of regulatory interest absent a showing that they pose at least as serious a threat to the environment as traditional open dumps?

Sites which raise issues such as this are perhaps best dealt with by the regular enforcement process where a much wider range of factors can be considered. These would include mitigating circumstances, the appropriateness and amount of any penalty and what remedial action, if any, is necessary given the specifics of the site. The AC process is too limited in scope to address such complexities.

For these reasons I respectfully concur.


John C. Marlin

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 23rd day of October, 1992.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board