

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1993

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

ORDER OF THE BOARD (by G. T. Girard):

On November 23, 1992, the Illinois Environmental Protection Agency filed a motion for reconsideration. The motion asks the Board to reconsider its opinion and order of October 16, 1992. The respondents have not filed a response to the motion for reconsideration. The Board grants the motion to reconsider.

The Board's October 16, 1992 opinion and order concluded that the Agency failed to show that Ronald and Retha Rawe (Rawes) were the owners of the property containing site 1 and site 2 on which open dumping had occurred.

The Agency, in its motion, contends that the Board relied on testimony excluded from the record by timely and sustained objections. The Agency further argues that the Board failed to consider competent testimony and evidence admitted into the record by the hearing officer. The motion states that the conclusion that the road was capable of movement was based on hearsay testimony from Ronald Rawe which was objected to and sustained by the hearing officer. The Agency asserts that the Board did not consider the deed to the property and the testimony of Violet Rawe in reaching their conclusion. The Agency argues that only the incentive to avoid future enforcement will result in a clean-up effort.

The Board believes that the Agency's arguments have merit. Therefore, the Board will reverse its decision regarding ownership of sites 1 and 2. The Board finds that the deed clearly indicates that the property line of respondents' property extends to the road. Thus, respondents own sites 1 and 2.

The Board notes that only the portion of its October 16, 1992 opinion and order relating to sites 1 and 2 is reversed, the remainder of the opinion and order is affirmed. Further, the reversal of the Board's previous holding on sites 1 and 2 will not affect the fine imposed in this matter. The Agency had cited

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the respondents for only one count of violation. Therefore, the fine will remain five hundred dollars (\$500).

This matter is also before the Board for assessment of hearing costs pursuant to Section 42(b) of the Environmental Protection Act (Act). (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042(b).) On October 15, 1992, the Board found Ronald and Retha Rawe in violation of Section 21(p)(1) of the Act and imposed a penalty of \$500 on respondent. The Board also directed the Clerk of the Board and the Agency to file a statement of costs within 30 days of the August 13, 1992, opinion and order. On October 22, 1992, the Clerk of the Board filed a statement of costs totaling \$837.59. On November 23, 1992, the Agency filed a statement claiming no costs in this matter. The respondents have filed no objection or response to these filings.

This constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby reverses its decision of October 16, 1992 regarding sites 1 and 2. The remainder of that decision is affirmed.
- 2) It is hereby ordered that within 30 days of the date of this order, Ronald and Retha Rawe shall, by certified check or money order payable to the State of Illinois and designated for deposit in the General Revenue Fund, pay as compensation for hearing costs incurred by the Board, the amount of \$837.59 which is to be sent to:

 Illinois Environmental Protection Agency
 Fiscal Services Division
 2200 Churchill Road
 Springfield, IL 62706
- 3) This docket is hereby closed.

IT IS SO ORDERED.


Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par 1041) provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

Board Members Joan Anderson, John C. Marlin and Bill Forcade concurred.

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Board Member J. Theodore Meyer dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of January, 1993, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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