

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1993

COUNTY OF MADISON,)
)
 Complainant,)
)
 v.) AC 91-55
) (02-91)
 VERNON ABERT,) (Administrative Citation)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on motion for reconsideration of the Board's December 17, 1992 order in this matter.¹ The motion was filed on January 21, 1993, by the County of Madison (County). On February 9, 1993, Vernon Abert filed a response in opposition to the County's motion.

In support of its motion, the County argues that the Board applied an improper standard of proof to the case. (Mot. at 1-2.) County states that the standard of proof to be applied is a preponderance of the evidence and that the Board applied a standard of clear and convincing evidence. (Mot. at 1.) Abert in his response states that the County's evidence did not reach the level required for the preponderance of the evidence standard. (Mot. at 1.) The Board hereby grants the County's motion for reconsideration in order to address the argument presented.

In its motion for reconsideration, County points out the Board in its December opinion stated, "Given the conflicting evidence, the Board does not find that the County has shown by clear and convincing evidence that Abert caused open dumping resulting in litter." (Mot. at 1 citing opinion at 5-6.) The Board notes its unfortunate word choice in its December 17, 1992 opinion. However, the correct standard of proof was applied in the case. The Board applied a preponderance of the evidence standard as is required by statute. (5 ILCS 100/10-15.² See also, Lefton Iron and Metal Company, Inc. v. City of East St. Louis (April 12, 1990), PCB 89-53 at 3, 110 PCB 19, 21; Bachert

¹Citations to the Board's December 17, 1992 opinion will be opinion at ___.

²This section of the Administrative Procedure Act was previously codified at 1991, Ill.Rev.Stat. ch. 127, par. 101-15.

v. Village of Toledo Illinois, et. al (November 7, 1985), PCB 85-80 at 3, ___ PCB ___, ___; Industrial Salvage Inc. v. County of Marion (August 2, 1984), PCB 83-173, ___ PCB ___ citing Arrington v. Water E. Heller International Corp. (1975) 30 Ill. App. 3d 631, 333 N.E.2d 50.) Therefore, the Board affirms its December 17, 1992, decision and finds that Vernon Abert did not violate sections 21(o)(5) and 21(p)(1) of the Illinois Environmental Protection Act. (415 ILCS 5/21(o)(5) and (p)(1).)³

This opinion and the December 17, 1992 opinion constitute the Board's findings of fact and conclusions of law in this matter.

ORDER

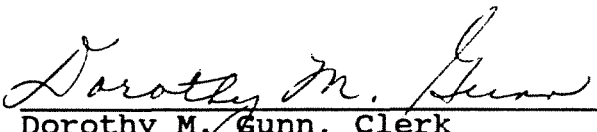
The Board finds that Vernon Abert did not violate sections 21(o)(5) and 21(p)(1) of the Act. Therefore, this AC is dismissed.

IT IS SO ORDERED.

R.C. Flemal dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992).) 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.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of February, 1993, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

³Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively. The Board's opinion and order reflect the current section numbers. The Act was previously codified at 1991, Ill.Rev.Stat. ch. 111 1/2 par. 1001 et. seq.