

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 01-135
) (Enforcement – Land)
PATRICK ROBERTS LAND TRUST,)
)
Respondent.)

DISSENTING OPINION (by W.A. Marovitz):

I respectfully dissent from the Board’s opinion and order issued today. I disagree with the assessed penalty.

The uncontested facts show that respondent did not have a permit from the Agency to operate a waste-storage waste- treatment, or waste-disposal operation at the site. However, respondent openly dumped waste, including wood, shingles, bedsprings, chairs, mattresses, etc. at the site. The Illinois Environmental Protection Agency’s (Agency) inspector observed water flowing through ravines and in direct contact with exposed refuse at the site. The inspector also observed a pool of leachate from the Old Weaver Landfill.

Despite the Agency sending two violation notices and three continuing violation letters to respondent, respondent refused to clean up the site for over two and a half years. The evidence shows respondent had adequate notice from the Agency to remediate the site, but despite repeated warnings, waited two and a half years before remediating the site.

I do not believe the \$12,000, penalty assessed today is “commensurate with the seriousness of the infraction.” ESG Watts, Inc. v. PCB, 282 Ill. App. 3d 43, 668 N. E.2d 1015 (4th Dist. 1996).” First, the violations are serious, occurred for a long period of time, and respondent abjectly refused to give respect to the environmental laws of Illinois. Second, the Attorney General states that the statutory maximum penalty “is well in excess of thirty million dollars.” Comp. Br. at 15. If the statutory maximum penalty, “is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts,” IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), then the penalty should be much higher. Comp. Br. at 14.

The Attorney General’s office does not sufficiently explain why \$12,000 is the appropriate penalty. Section 42(a) of the Environmental Protection Act (Act) (415 ILCS 5/42(a) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002) provides for a civil penalty not to exceed \$50,000 for violating a provision of the Act and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues. These violations occurred for over two and a half *years*. The penalty imposed today is only \$2,000 greater than the additional civil penalty

amount granted under Section 42(a) for *one* day for *one* violation (\$10,000). Given that the maximum penalty is in the 30 million dollar range, I do not agree with a penalty that is essentially a slap on the wrist.

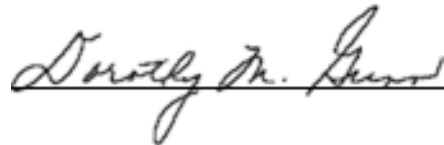
Additionally, recent reports state that Illinois leads the nation in West Nile Virus deaths. Because some of the reports suggest dump sites serve as breeding grounds for mosquitoes, we should be more diligent with these cases. We should send a message that delay in remediating these types of sites will not be tolerated.

For these reasons, I respectfully dissent.

A handwritten signature in black ink, appearing to read "William A. Marovitz", written over a horizontal line.

William A. Marovitz
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on September 19, 2002.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board