

ILLINOIS POLLUTION CONTROL BOARD
January 23, 2003

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

DISSENTING OPINION (by W.A. Marovitz):

Consistent with my dissent on September 19, 2002, in this case, I respectfully dissent from the Board’s final opinion and order issued today. As I stated, in my previous dissent, 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.

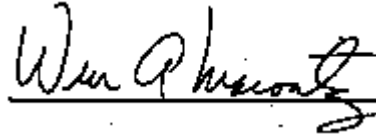
Despite the Agency sending two violation notices and three continuing violation letters to respondent, respondent refused to clean up the site for over two and a half years. The evidence shows respondent had adequate notice from the Agency to remediate the site, but despite repeated warnings, waited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

I continue to believe the assessed \$12,000 penalty is not “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).” As I stated in my September, 19, 2002 dissent, 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 stated 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 did 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

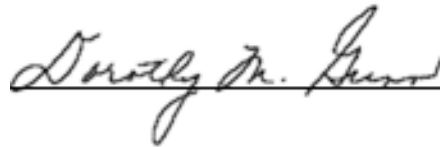
day during which the violation continues. These violations occurred for over two and a half years. The imposed penalty imposed is only \$2,000 greater than the additional civil penalty amount granted under Section 42(a) for *one* day for *one* violation (\$10,000).

For these reasons, I respectfully dissent.

A handwritten signature in cursive script, 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 January 23, 2003.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board