

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1987

RICK MOORE, LEONARD MORRIS)
and EDITH SIMPSON,)
)
Petitioners,)
)
v.) PCB 86-197
)
WAYNE COUNTY BOARD and)
DAUBS LANDFILL, INC.,)
)
Respondents.)

DISSENTING OPINION (by J.D. Dumelle and J. Theodore Meyer):

While we agree with much of what is contained in the majority's opinion, we cannot agree with the conclusion. We believe that the general rule regarding legal descriptions as set forth in Gard and cited by the majority should guide the decision: that is, in essence, that the Board should look to the purpose of the notice and whether that purpose was fulfilled.

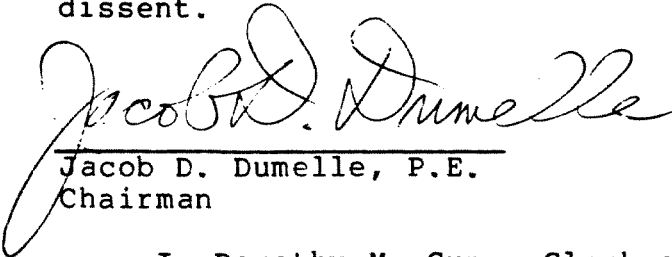
While we are mindful of the various cases cited by the majority which have strictly construed various aspects of the notice requirements, by and large those cases are based upon timing: either the notice was not timely published or did not contain accurate information regarding the time period for which some action was to take place. None of the cases cited deal with the adequacy of the description of the location of the proposed site.

As the majority correctly notes, there is no requirement that a legal description of the location of the site even be included in the notice. The majority also acknowledges that the narrative description of the property which immediately followed the legal description was accurate, and would have been found to be sufficient if there had been no legal description at all. Furthermore, the legal description was correctly contained in the County's public notice of hearings. Finally, the record is devoid of any evidence that anyone was misled or harmed by the inaccuracy of the legal description.

The only notice defect at issue here is a typographical error in one number of the legal description; otherwise, the majority found that "Daubs caused notice to be published and to be served on all required individuals in a timely and proper manner." Based upon the facts of this case we can find nothing to support a conclusion that the notice failed to accomplish its

intended purpose or that there is any substantial possibility that anyone was misled, harmed or prejudiced by the typographical error. While we realize that sometimes such harm must be presumed since the inadequacy of the notice could serve to preclude awareness of the proceeding in which to raise objections, we cannot find that to be the case where, as here, a correct narrative description of the property was included in the original notice and the notice of hearing was fully accurate.

For these reasons we cannot find that the typographical error in this case is of such import as to constitute a fatal defect in notice so as to render nugatory over 14 months of legal proceedings. We would have found proper jurisdiction and gone on to consider the merits of the case. Therefore, we respectfully dissent.

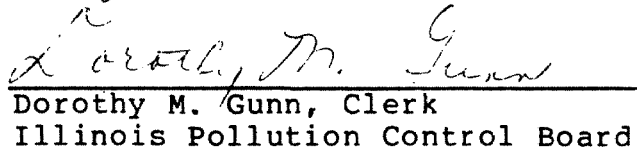


Jacob D. Dumelle, P.E.
Chairman



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 26th day of February 1987.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board