

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1988

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

ORDER OF THE BOARD (by J.D. Dumelle):

This matter is before the Board on two motions filed by petitioners Rick Moore and Leonard Morris on July 7, 1988. (Although Edith Simpson was listed as a petitioner in earlier proceedings in this case, she is not listed as a petitioner in either of these two motions.) The first motion asks that Klockau, McCarthy, Ellison & Marquis, P.C. be allowed to substitute instanter as counsel in place of former counsel James Yoho on behalf of petitioners Rick Moore and Leonard Morris. The motion to substitute is granted.

The second motion asks the Board to vacate its June 2, 1988 Opinion and Order, which upheld the decision of respondent Wayne County Board granting site approval to respondent Daubs Landfill, Inc. Petitioners maintain that Daubs failed to perfect service of pre-filing notice on all property owners within 250 feet of the proposed facility. Specifically, petitioners contend that Daubs did not serve Wayne County Bank and Trust Company, which is listed in the county tax records as the owner of two parcels of lands in the subject area. Petitioners thus insist that Daubs' failure to serve notice on Wayne County and Trust constitutes a jurisdictional defect in the proceedings, pursuant to Section 39.2(b) of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111^{1/2}, par. 1039.2(b)), divesting the Wayne County Board and this Board of jurisdiction. Respondent Daubs filed objections to the motion to vacate on July 20, 1988.

Before the Board will decide petitioners motion, certain issues must be further addressed. The Board directs the parties to submit briefs on the issues set forth below. The Petitioners are directed to submit their brief not later then 21 days from the date of this Order. Respondent is directed to submit its brief not later then 21 days thereafter.

The parties shall address the following issues:

- (1) Whether the Board has authority to review this jurisdictional issue consistent with the remand order of the Appellate Court;
- (2) If the Board has such authority, whether an additional hearing is necessary to address this issue or whether the existing record consists of evidence sufficient to enable the Board to render a decision. If the existing record is believed to be sufficient, provide specific citation to such evidence.

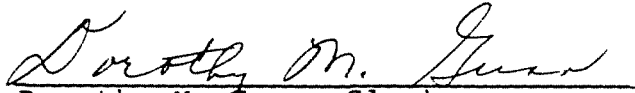
Also, the Board directs the Petitioners to specifically cite, with reasons, which provisions of 35 Ill. Adm. Code 103.Subpart H: Relief From Final Orders the motion for rehearing is founded upon.

Finally, the Board notes that it reserves ruling on PCB 88-24 (Daubs 2) until final action is taken on Petitioners' motion in this proceeding.

IT IS SO ORDERED.

Board Member B. Forcade abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of August, 1987, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board