

ILLINOIS POLLUTION CONTROL BOARD  
May 29, 1980

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 77-345  
 )  
 JOHN PANOZZO, )  
 )  
 Respondent. )

ANNE MARKFY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

SAMUEL H. SHAPIRO, FRIEDMAN & KOVEN, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the December 29, 1977, Complaint brought by the Illinois Environmental Protection Agency (Agency). The Respondent, John Panozzo, was charged with multiple and continuing violations of the Board's Chapter 7: Solid Waste Regulations (Chapter 7), and of the Rules and Regulations for Refuse Disposal Sites and Facilities of the Department of Public Health (Public Health Rules), which Rules had governed operation of the site prior to July 27, 1973, the effective date of the Board's Chapter 7 Rules.

A brief hearing was held on October 27, 1978, at which the parties appeared by their attorneys for the purpose of outlining a proposed settlement. No members of the public were present. By November 29, 1979, this stipulation and settlement proposal had not been reduced to writing or filed with the Board as required by Board Procedural Rule 331. Accordingly, on that date, the Board entered an Order stating that the case would be subject to dismissal if no stipulation was filed within 30 days or if no hearing was scheduled within 21 or held within 60 days. The parties finally filed a Stipulation of Facts and Proposal for Settlement on May 2, 1980, which is substantially the same as that outlined in October, 1978.

Respondent Panozzo owns and operates a produce stand in Kankakee County, adjacent to which is a 42 acre property also owned by Panozzo. Panozzo operated or allowed the operation of this property as a solid waste management site. This property is bounded to the west by Illinois Route 50 and to the north by Soldier Creek (Stip. 3).

The Complaint covers the period from March 15, 1973 to October, 1977. Count I of the Complaint alleged that Panozzo caused or allowed disposal of refuse on his site without ever obtaining necessary Agency-issued permits, in violation of Rule 202(b)(1) of Chapter 7 and Section 21(d) of the current Environmental Protection Act (Act).\*

Section 49(c) of the Act continued the effectiveness of the Public Health Rules until superseded by the Board's Chapter 7 Rules on July 27, 1973. Count II of the Complaint charged violations of Section 9(c) and certain Public Health Rules on various dates between March and July, 1973. They are Rules 3.05 (open burning of refuse), 4.03 (inadequate fencing and gating), 5.03 (failure to confine dumped refuse to the smallest possible area), 5.04 (unloading of refuse without proper supervision), 5.05 (absence of necessary operational equipment), 5.06 (refuse dumping without rapid spreading and compacting), 5.07 (failure to apply requisite daily cover).

Count III of the Complaint charged violations of Chapter 7 and of Sections 9(c) and 21(a) and (e) of the current Act\* on various dates in the period July 23, 1973 to October, 1977. These included Rule 303(b) (acceptance of refuse without rapid spreading and compacting at toe of fill), Rule 304 (operation with insufficient equipment, personnel and supervision), Rule 305(a) (operation without daily spreading of compacted layer on exposed refuse), Rule 305(b) (requiring daily placement of 12-inch compacted layer where no additional refuse is to be deposited within 60 days), Rule 305(c) (requiring placement of two feet of suitable material over final lift within 60 days of placement), Rule 310(b) (unpermitted acceptance of hazardous or liquid wastes), Rule 311 and Section 9(c) of the Act (open burning), Rule 314(c) (requiring fencing, gates and other access controls), and Section 21(a) of the Act (open dumping of garbage).

The Stipulation of Facts reveals that from March 15, 1973, to the date of the filing of the Complaint, the Agency made 39 inspections of the Panozzo waste disposal site. The observations made by Agency inspectors on each specific inspection date are set out in the Stipulation (Stip. 5, p. 3-6); the following is a brief summary.

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\*The Complaint, filed in 1977, alleged violations of Sections 21(e) and (f) of the Act as enacted by P.A. 76-2429 (eff. July 1, 1970) and amended by P.A. 79-762 (eff. Oct. 1, 1975). In the current Section 21 of the Act, as amended by P.A. 81-856 (eff. Jan. 1, 1980) former Section 21(e) is now Section 21(d), and former Section 21(f) is now Section 21(e). No change was made in the wording of either section.

On many inspection dates, smoking or burning refuse was observed. Putrescible garbage, consisting of spoiled produce and sludge was frequently found present; on one occasion, dead animals were a component of this putrescible garbage. On another occasion barrels of oil were dumped; on one inspection date, the dumping of unidentified liquids was seen. The Panozzo site is bounded to the north by Soldier Creek: the inspection observations for May 27, 1975, and May 20, 1976, note, "leachate seen flowing north into an adjacent marsh" (Stip. 5, p. 5). Lack of proper equipment, fencing and other access restrictors, and appropriate cover was a frequent notation.

While over 20 letters and enforcement notices were sent to Panozzo between 1973 and 1977, he nonetheless continued to operate the site improperly and without required permits: from March, 1973 until 1974 (sic), the City of Bradley disposed of refuse at a cost to them of \$1000, and the Azzarelli Construction Company and other unnamed persons used the site for refuse disposal from 1973 through 1977, for which use the company was to have graded and covered the site (Stip. 4). The Agency made one post-Complaint inspection of the site in October of 1979. While the inspector reported "some cover on most of site-overall site condition improved", there were nonetheless "three small areas of recently dumped vegetables, produce containers, broken asphalt, and white bodies (sic) observed, partially covered" (Stip. 5, p. 6).

The parties' proposed settlement agreement consists of entry of a cease and desist order, compliance program and a stipulated penalty of \$7500. The compliance program, if approved by the Board, would require Panozzo to a) place a two foot layer of final cover on the site and to vegetate it, within 30 days of the Board's Order, b) to submit to the Agency for its approval, plans for on-site groundwater monitoring wells, also within 30 days, c) to install and have operable the wells as specified in the Agency-approved plan, within 90 days, d) to maintain the wells in good operating condition for a three-year period and e) make any future transfer of all or any part of his interest in the site conditional on Respondent Panozzo's continued right of access to the site to enable him to satisfy the "Completion or Closure Requirements" of Rule 318 of Chapter 7 (Stip. 10).

Based on the agreed facts, the Board finds John Panozzo to have operated a solid waste disposal site without developmental, operational or supplemental permits, and to have operated the facility improperly in each of the several particulars charged in the Complaint, in violation of Public Health Rules 3.05, 4.03, 5.03, 5.04, 5.06, 5.07, Chapter 7 Rules 202(b)(1) 303(b), 304, 305(a,b,c), 310(b), 311, and 314(c), and Sections 9(c) and 21(a), (d), and (e) of the Act.

In evaluating this stipulation and settlement pursuant to Section 33(c) of the Act and Procedural Rule 331, the Board notes that the record does not contain "any explanation for past failures to comply..." (Procedural Rule 331(a)(3)).

The permit system which is the cornerstone of the Act was designed to recognize the public's need to be protected from injury to, or interference with, health and property. The record here does not speak to Respondent's economic gain while neglecting to comply with the law in operating this site. However, the record does show that the Respondent has failed to react to the permit system and its requirements, in spite of receiving numerous letters and notices of violation over a number of years. This case is decidedly one in which the Board must use its penalty provisions as an economic incentive for compliance with the permit requirements of the Act and as a deterrent from future violations.

The Board finds the stipulated settlement and compliance program acceptable, and incorporates them herein by reference as if fully set forth. The Board further finds that the stipulated penalty of \$7500 is warranted here. A penalty of \$7500 is hereby assessed against John Panozzo as a necessary aid to the enforcement of the Act.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

1. Respondent John Panozzo is hereby found to have operated a solid waste disposal site improperly and without necessary permits in violation of Sections 9(c) and 21(a), (d) and (e), of the Environmental Protection Act, of Rules 202(b)(1), 303(b), 304, 305(a,b,c), 310(b), 311, and 314(c) of Chapter 7: Solid Waste Regulations, and Rules 3.05, 4.03, 5.03, 5.04, 5.05, 5.06, and 5.07 of the Rules and Regulations for Refuse Disposal Sites and Facilities of the Department of Public Health.

2. The Respondent is hereby ordered to cease and desist from causing or allowing the disposal of refuse on his site without first obtaining all necessary permits from the Illinois Environmental Protection Agency, and to cease and desist from any other further violations of the aforementioned Rules and Act.

3. Within 30 days of this Order, the Respondent shall submit to the Agency a plan for installation of groundwater monitoring wells on the site. The plan shall show the number, location and depth of the monitoring wells. The monitoring well plan shall take into account the geology of the area, the groundwater gradient, and the depth of the fill.

4. Within 90 days of this Order, the Respondent shall install and have operable the monitoring wells as described in the aforementioned plan, subject to such modifications as the Agency may require. Panozzo shall maintain the monitoring wells in good operating condition for a period of three years from the date of this Order.


5. Transfer of all or any part of Respondent's interest in the site to another person or entity shall be made conditional upon Respondent's continued right of access to the site to allow him to satisfy the requirements of Rule 318 of Chapter 7: Solid Waste Regulations.

6. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay a stipulated penalty of \$7500 which is to be sent to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, IL 62706

IT IS SO ORDERED

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 29<sup>th</sup> day of May, 1980, by a vote of 40.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board