

ILLINOIS POLLUTION CONTROL BOARD
January 10, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-297
)
 JOHN C. EINSWEILER and LEMFCO,)
 INC.,)
)
 Respondents.)

MS. NANCY J. BENNETT, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. RICHARD ELLIOTT, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed December 1, 1978 by the Environmental Protection Agency (Agency) naming as Respondents Lemfco, Inc. (Lemfco), an Illinois corporation and John C. Einsweiler (Einsweiler), its registered agent. The complaint alleged violations of §21(e) of the Environmental Protection Act (Act) and Rules 202(a), 305(a), 305(c) and 314(c) of Chapter 7: Solid Waste Rules and Regulations in connection with a site in Jo Daviess County used for disposal of foundry wastes generated by Lemfco's operations. A hearing was held in Galena on September 26, 1979 at which time the parties read a settlement agreement into the record. No members of the public attended the hearing and no comment has been received. A stipulation and proposal for settlement was filed November 15, 1979.

Lemfco's operations in Galena generate foundry slag wastes and sand. From before May 2, 1977 through December 1978 Respondents caused or allowed deposition of these wastes on a site owned by Einsweiler and described as within the NW/c, SW 1/4, NW 1/4, Sec. 13, T. 28 N., R. 1 W. of the 4th PM, Jo Daviess County (R. 8, Stip. 1). Einsweiler is involved in this action both as owner of the site and the registered agent of Lemfco.

In May, 1977 the Agency notified Einsweiler that the operation required a solid waste permit. On June 1, September 1, 1977 and February 6, 1978 Einsweiler submitted permit applications. These were denied. An Illinois State Geological Survey analysis of the site indicates that it is not suitable for the disposal of industrial wastes containing phenolics and cyanides, such as those involved here because of the potential for groundwater pollution (R. 9; Stip. 5). The wastes deposited at the site along a ravine were placed in the line of natural drainage (Stip. 3; Ex. B-2). The Agency has detected these contaminants near the site in wells owned by Respondent Einsweiler and by Eric Einsweiler.

On July 13, 1977 the Agency notified Einsweiler that completed portions of the site required twenty-four inches of suitable cover [Solid Waste Rule 305(c)]. The work was commenced in October, 1977. Agency inspection of June 9, 1978 first disclosed application of cover to the site. Cover application was completed in December, 1978 and seeding was completed on May 7, 1979. The area was fenced in August, 1978 [Rule 314(c)].

In the stipulation Lemfco and Einsweiler admit that they conducted refuse collection or disposal operations without a permit in violation of Solid Waste Rule 202(a) and §21(e) of the Act. Respondents will cease and desist unpermitted operation. They have agreed to maintain the cover at its depth of seventeen to twenty-four inches as it was on July 31, 1979 and to reapply cover to a depth of twenty-four inches over any areas disturbed in the future. They will for three years conduct quarterly monitoring of the wells of John C. and Eric Einsweiler. The Board finds the settlement reasonable under Procedural Rule 331. The parties have not agreed on the amount of a monetary penalty. The Agency recommends \$3000, Respondents nothing.

Ignorance of the permit requirement is not a defense. Respondents continued to operate without a permit for one and one-half years after notification (R. 9, 14). Respondents contend that disposal of the waste was necessary to Lemfco's operation and that the dumping was stopped as soon as another landfill in the area received a permit to accept the waste. Respondents contend that closing Lemfco would have resulted in high unemployment in the Galena area (R. 13). Respondents have made no contention of financial hardship. After receiving notification of violation Respondents were reasonably diligent in making permit applications and in bringing the site into compliance.

The Board finds that a monetary penalty is necessary to aid in enforcement of the Act. Having considered §33(c) of the Act and the mitigating factors outlined above, the Board will levy a penalty in the amount of \$1000.

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

ORDER

1. Respondents Lemfco, Inc. and John C. Einsweiler are in violation of §21(e) of the Environmental Protection Act and Rule 202(a) of Chapter 7: Solid Waste Rules and Regulations.
2. Respondents shall cease and desist further violation of §21(e) of the Environmental Protection Act and Chapter 7: Solid Waste Rules and Regulations.
3. Respondents shall comply with the terms of the stipulation and proposal for settlement filed November 15, 1979.
4. Respondents shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1000 which is to be sent to:

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

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of January, 1980 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board