

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 80-185
)
 PIELET BROS. TRADING, INC.,)
)
 Respondents.)

CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
COMPLAINANT, AND

A.J. NESTER (CHURCHILL, NESTER, AND McDONNELL) APPEARED ON BEHALF
OF RESPONDENT.

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

This matter comes before the Board on the six-count complaint filed October 6, 1980 by the Illinois Environmental Protection Agency (Agency) against Piolet Bros. Trading, Inc. (Piolet). Piolet is charged with various violations of the Act and the Chapter 7: Solid Waste (Chapter 7) regulations arising from its operation of an 80-acre site for the disposal of auto shredding waste, located at an address commonly known as 1500 North First Avenue, National City, in an unincorporated area of St. Clair County.

Hearing was held on April 29, 1981. At hearing, Counts II, III, and IV of the complaint were amended for correction and to include allegations subsequent to October 6, 1980. The Board finds this amendment proper pursuant to Procedural Rule 326.

On November 18, 1981, the Agency moved the Board to expedite decision in this matter. In so doing, the Board expresses no opinion concerning the pending permit application to which the motion refers.

Count I of the Complaint charges that between November 1, 1975 and October 26, 1979, Piolet operated a landfill for refuse generated by other than its own on-site activities without an operating permit, in violation of Rule 202(a) of Chapter 7 and Section 21(e) of the Act. Count II alleges that on various dates from August 1, 1976 to November 18, 1980, Piolet violated conditions of a 1976 development permit, a 1977 supplemental permit and a 1979 operating permit concerning construction and

use of trenches, in violation of Rules 301 and 302 of Chapter 7, and Sections 21(a-b) of the Act. Count III posits that on various dates from January 1, 1978 to November 18, 1980, Piolet violated the daily cover requirements of Rules 301, 302, and 305(a) of Chapter 7, and Sections 21(a-b) of the Act. Count IV alleges that on various dates between August 1, 1976 and November 18, 1980, Piolet failed to properly spread and compact refuse in violation of Rules 301 and 303(b) of Chapter 7 and Sections 21(a-b) of the Act. Count V charges that between August 1, 1976 and October 6, 1980 Piolet failed to provide adequate roads within the site in violation of Rules 301 and 314(b) of Chapter 7 and Sections 21(a-b) of the Act. Finally, Count VI alleges that on various dates between March 1, 1978 and October 2, 1980, Piolet caused or allowed open burning on the site in violation of Rules 301 and 311 of Chapter 7, Rule 502 of Chapter 2: Air Pollution, and Sections 9(c) and 21(a-b) of the Act.

The evidence in this action is uncontroverted. The dispute instead concerns two questions of law: a) whether a permit is required for the Piolet site, and b) whether a two-year statute of limitations bars introduction of evidence of events prior to October 6, 1978. A review of the evidence is in order prior to consideration of these issues.

Piolet Bros. Trading, Inc., originally incorporated April 2, 1975 as St. Louis Auto Shredding, Inc., has been doing business under the "St. Louis" name, even since May 23, 1975, when "Piolet" became the official corporate name. The landfill site in question is immediately adjacent to, but separated by a railroad track, from a Piolet operated metal recovery facility which generates the waste disposed of at the site. Piolet accepts derelict autos, discarded appliances, and the like, which are put through a Maller mill, which grinds or crushes the objects. Metals are separated from the other crushed materials (e.g. fabric, glass, plastic, padding) magnetically, by washing and resultant settling, or by hand picking. While these processes remove most of the metal from the waste "fluff," the fluff contains limited amounts of metal, such as insulated copper wire (R. 37, 139-140, 145).

Piolet has operated the fluff disposal site since November, 1975. On May 21, 1976 Piolet received a developmental permit for the site. The permit specified, among other things, that trenches were to be dug, that certain of these trenches not exceed 3 feet in depth, that if sand lenses were encountered in the digging they were to be "overexcavated" and filled with two feet of compacted clay, that monitoring wells be maintained and daily cover applied (Ex. A to Ex. 1). On December 5, 1977, a supplemental permit was issued modifying the 1976 permit. The allowable number of trenches was decreased from 40 to 8. The monitoring, sand lens and daily cover conditions were repeated (Ex. B to Ex. 1). On October 26, 1979 Piolet received a permit to operate only Trench #3, which was not to exceed eight feet in depth. In addition to other new and repeated conditions, the Agency directed that

standing water was to be removed before refuse was deposited in the trench (Ex. C to Ex. 1). Between January 1, 1976 and January 11, 1980, the Agency sent Piolet 6 letters detailing various deficiencies noted during inspection of the site and on March 29, 1979 sent an "enforcement notice" explaining that an enforcement action would be filed if immediate correction action was not taken (Ex. D-H, J, K to Ex. 1).

At hearing, the Agency presented the evidence of four employees who had variously inspected the site on 13 separate dates between August 27, 1976 and November 18, 1980, taking photographs on a number of occasions.

Piolet received its first operating permit on October 26, 1979, but had engaged in disposal operations prior to that time. This is evidenced by testimony and photographs concerning inspections made August 27, September 22 and November 8, 1976 (R. 16-31, Ex. 3), March 9, 1977 (R. 31-37, Ex. 5), March 31, June 27, August 2, and December 28, 1978 (R. 119-129, 49-54, Ex. 9, 10), and March 13 and June 19, 1979 (R. 54-61, 82-94, Ex. 6, 8). During this period, refuse was observed above-grade (R. 52, 87-88, 118, 123, Ex. 8, 9). After receipt of the permit to operate Trench #3 only, Agency inspections on December 28, 1979 and April 2, and November 18, 1980 showed that Piolet was not placing waste in Trench #3 only, as authorized, but was depositing the waste on sizeable areas of the site's surface (R. 123-131, 133, 64, Ex. 7, 11, 12).

Other violations of the various permits were also observed. In November, 1976, a violation of the permit's requirements for trench depth and clay packing of sand layers was noted. A 6 foot trench had been dug (permitted only to a 3 foot depth) which was filled with water because of its sand layer bottom (R. 30, 45). Monitoring wells were destroyed or damaged by on-site fires in November, 1976 and August 1978 (R. 29-30, 126), and were surrounded by waste fluff and ponded water on 5 dates between 1978 and 1980 (R. 59, 64, 127, 130, 135, Ex. 6-7, 11-12).

The cover requirements of all permits and Rule 305(a) were consistently violated, as graphically depicted in the photo exhibits. Fluff was unloaded from the trucks and spread upon the ground on a five to 10 acre area of the site, and was inadequately spread or compacted, if at all, in addition to being uncovered (e.g. R. 23, 32, 35, 49-57, 62, 122-123, 126, 130, 133-135, Ex. 5, 7, 10, 12). At some times, due to the fact that the in-site roads were made of dirt rather than an all weather surface, roads were too muddy for operational equipment to operate (R. 19-20, 24, 57, 129). However, Piolet often had no equipment available for cover or other purposes (R. 86, 87), and did not insure its continuous availability until January, 1981 (R. 143).

Lack of cover and equipment has contributed to repeated and uncontrollable on-site fires. The Piolet site is easily accessible to trespassing scavengers in search of reclaimable

insulated copper wire. In burning the insulation from the wire, scavengers have started fires. Fires have also been presumably caused by railroad fuses (flares) tossed by trainmen from the adjoining railroad track (R. 145-153). The Agency witnesses testified to fires during their visits on five dates in 1978 and 1979 (R. 117-119, 124, 129, 56, 83-84, Ex. 9, 10, 6, 8), an Agency employee further noted that he often saw smoke rising from the site as he drove to work during the summer of 1979 (R. 93), and Piolet's site manager Bowler admitted that fires have occurred since he began managing the site in January, 1981 (R. 144). Pushing or mulling the trash around has controlled the fire on some occasions, although necessary equipment has not always been available (R. 117, 86-87). However, the combination of wind and the expanse of the uncovered waste has sometimes insured that fire continued despite such efforts, for as long as an entire weekend (R. 119, 122). Piolet did not begin to attempt to control access to the site, or to make sure that necessary equipment was on hand to control fires, prior to Mr. Bowler's employment as site manager in January, 1981 (R. 143, 148, 153).

Piolet presented no explanation or mitigation for its actions, except as related to the cause of fires and Mr. Bowler's efforts in 1981. It argues only that it needs no permit for this site, based on Section 21(d) of the Act which states in pertinent part

"No person shall....[c]onduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency...

The Board finds that this exemption does not apply to the Piolet site. In 1975, the Board held that the exception "only exempts minor amounts of refuse which could be disposed of without environmental harm upon the site where it was generated" IEPA v. City of Pontiac, PCB 74-396, 18 PCB 303 (August 7, 1975). This rationale has withstood appellate challenge in R.E. Joos Excavating v. IEPA, 58 Ill. App. 3d 309, 374 N.E.2d 486 (1978), and has been recently reaffirmed by the Board in Reynolds Metals Co. v. IEPA, PCB 79-81 (August 20, 1981 and November 19, 1981).

Piolet operates a large site (80 acres) and according to its permit applications anticipates depositing as much as 250 cubic yards of waste on the site daily. It has been proven that this waste fluff is easily ignitable, and that numerous on-site fires have occurred. The waste additionally has some metallic content, with a resulting potential for leachate when deposited in water, as it has been. Here, the Board need not speculate as to whether unpermitted disposal of this waste has a potential for environmental harm. Air pollution by open burning has been proven. In addition, lack of concern about water pollution has been demonstrated by Piolet's casual disregard of requirements to create secure trenches and to maintain monitoring wells. The Piolet site

has been sloppily run even under Agency oversight through the permit program. Pielet cannot now credibly argue that without such oversight the site will be managed in an environmentally responsible fashion.

Pielet next argues that the statute of limitations contained in Ill.Rev.Stat. Ch. 83, Sec. 15 bars introduction of evidence concerning events prior to October 2, 1978. The Board has previously decided that this limitation is inapplicable to actions brought before the Board under the Act IEPA v. Cabot Corp., PCB 81-27, (April 16, 1981). As the Agency additionally notes a) the Act does not expressly limit any individual's cause of action to enforce the right to a clean environment, and b) Section 15 does not expressly limit the right of a state agency to vindicate a public right Clare v. Bell, 378 Ill. 128, 37 N.E.2d 812 (1941). Accordingly, the Board finds that admission of pre-1978 evidence was proper.

Based on this record, the Board finds Pielet in violation of the Act and the Board's rules as charged. The Agency seeks entry of a cease and desist order and imposition of a \$7,000 penalty.

In making its determination pursuant to Section 33(c) of the Act, the Board finds no evidence that it was technically impracticable or economically unreasonable for Pielet to achieve compliance. The social and economic value of Pielet's metal recovery operation is outweighed by the demonstrated injury to and interference with the environment. For six years Pielet's site has been operated with a substantial disregard of the Act, Board regulations, and permit requirements. The Board finds that entry of a cease and desist order, and a penalty of \$7,500 are necessary aids to enforcement of the Act.

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

ORDER

1. Respondent, Pielet Bros. Trading, Inc. has violated Rules 202(a), 301, 302, 303(b), 305(a), 311, and 314(a) of Chapter 7: Solid Waste, Rule 502 of Chapter 2: Air Pollution and Sections 9(c) and 21(a, b, e) of the Environmental Protection Act.
2. Respondent shall cease and desist from said violations.
3. Within 45 days of the date of this Order, Respondent shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$7,500 which is to be sent to:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

IT IS SO ORDERED.

Board Member D. Anderson concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of December, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board