

ILLINOIS POLLUTION CONTROL BOARD
July 6, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-310
)
DELUXE FLOORING, INC.,)
an Illinois corporation,)
)
Respondent.)

MR. ARTHUR B. MUIR, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

DELUXE FLOORING, INCORPORATED (BY MR. THOMAS BENNETT, PRESIDENT
AND MR. JAY STIMPSON, VICE-PRESIDENT), APPEARED ON BEHALF OF
THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Werner):

This matter comes before the Board on the November 29, 1977
Complaint brought by the Illinois Environmental Protection Agency
alleging that, from April 20, 1972 until October 2, 1973, Deluxe
Flooring, Inc. ("Deluxe") improperly received refuse at its solid
waste disposal site and that beginning on or about December 2,
1973, Respondent failed to place final cover on the site in
violation of Rule 301 and Rule 305(c) of Chapter 7: Solid Waste
Regulations and Section 21(b) of the Illinois Environmental
Protection Act. A hearing was held on April 25, 1978. The parties
filed a Stipulation and Proposal for Settlement on April 25, 1978.

Deluxe Flooring, Inc. is a small business which is engaged in
the installation of various types of interior floor coverings.
The sole office and place of business of this DuPage County firm
is located in West Chicago. The site is located in an area
primarily used for light industrial manufacturing. Agency
inspections revealed that, in the rear of Respondent's place of
business, demolition materials had been dumped openly on the site
and left uncovered. Deluxe had no permit to receive refuse, had
not limited access to the site, had not warned others against
dumping there, and had failed to place appropriate cover on the
refuse.

It is stipulated that "at no time has Deluxe, or any officer, agent or employee thereof, dumped, caused to be dumped, or authorized the dumping of refuse at the site. All refuse at the site has been placed there without the authorization or approval of Deluxe." (Stip., p. 4-5). However, Deluxe failed to properly limit access to the site. The parties also stipulate that the accumulation of refuse at the site is primarily due to the accessibility of Deluxe's property to motorized traffic. (Stip., p. 5).

The stipulated facts related to the litigation indicate that since December 2, 1973, Deluxe has failed to place adequate daily cover on all exposed refuse in violation of Solid Waste Rule 305(a) and Section 21(b) of the Act. Similarly, since December 2, 1973, the firm has failed to place appropriate final cover on the site in violation of Solid Waste Rule 305(c) and Section 21(b) of the Act.

Both the Complainant and Deluxe Flooring, Inc. agree that it is technically feasible and economically reasonable to limit access to the site and close the site in conformance with the Act and the Board's Solid Waste Regulations. Thus, a settlement proposal has been presented to resolve this enforcement proceeding.

Basically, the settlement agreement provides that the Company will: (1) immediately place final cover on the site; grade and contour the covered areas of the site; and seed all of the covered areas to provide erosion control; (2) limit access to the site (within 3 weeks of the Board's approval of the proposed settlement, weather permitting) by installation of a sturdy gate and fencing to prevent unauthorized traffic onto the site; (3) pay \$2,148.00 to Arrow Kennel & Fence Company to have appropriate fencing installed in accordance with Arrow's Proposal (Exhibit "K" of Stipulation and Proposal for Settlement); (4) close and lock the gate during non-working hours and all other occasions when adequate supervision cannot be maintained to prevent unauthorized traffic on the site; (5) submit monthly progress reports to the Agency detailing the work accomplished and the work remaining to be accomplished; and (6) notify the Agency, in writing, within one week of the completed installation of the fencing and the placement of final cover on the site.

The parties also agree and stipulate that, considering the size and nature of the Respondent's business, the expenditure of over \$2,000.00, even if not strictly as a penalty, will impose a substantial burden on Deluxe's financial resources. The net taxable income of the corporation for the year 1977, as reflected by its U. S. Income Tax Return, is stipulated to be approximately

\$1,500.00 . (Stip., p.2). In view of the nature of the violations, and because of the strong probability that the installation of the gate and fence will eliminate all future violations, the parties agree that an additional penalty is not appropriate in this case.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974).

Accordingly, the Board accepts the Stipulation and Proposal for Settlement and finds Deluxe Flooring, Inc. in violation of Rule 305(a) and Rule 305(c) of Chapter 7: Solid Waste Rules and Regulations and Section 21(b) of the Act from December 2, 1973 until November 29, 1977. In light of the Respondent's pending expenditure of over \$2,000.00 to correct these violations, the Board will impose no penalty.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Deluxe Flooring, Inc. has violated Rule 305(a) and Rule 305(c) of Chapter 7: Solid Waste Rules and Regulations and Section 21(b) of the Illinois Environmental Protection Act from December 2, 1973 until November 29, 1977.

2. Deluxe Flooring, Inc. shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed April 25, 1978, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of July, 1978 by a vote of 4-0.

Christan L. Moffett
Christan L. Moffett Clerk
Illinois Pollution Control Board