

ILLINOIS POLLUTION CONTROL BOARD
September 18, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
)
 v.) PCB 74-94
)
GLENN COOPER,)
 Respondent.)

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

This matter comes before the Pollution Control Board (Board) upon the Environmental Protection Agency's (Agency) March 14, 1974 complaint against Glenn Cooper for violations of Sections 21(a), 21(b) and 9(c) of the Environmental Protection Act (Act) Rules 4.03(a), 5.03, 5.04, 5.06, 5.07(a), 5.07(b), 5.09, 5.10(a), and 5.10(d) of the Rules and Regulations for Refuse Disposal Sites and Facilities and Rules 304, 305(a), 305(c), 306, 308, and 314(f) of the Board's Solid Waste Regulations. These violations allegedly occurred from April 26, 1971, to the date of filing the complaint. Glenn Cooper operated a refuse disposal site located in Section 21, Township 18 North, Range 11 West, in Cass County, Illinois, at all times pertinent to this action.

On June 27, 1974, the parties hereto filed a Stipulation and Proposal for Settlement, which admitted, for the purposes of settlement only, the alleged violations. The parties stipulated to the imposition of a penalty of \$1000.00.

On August 8, 1974, the Board rejected said stipulation, objecting to the fact that no mitigation had been shown and that the only thing in the record other than the stipulation was the complaint. The Board felt that for the scores of alleged violations the assessment of a penalty of \$1000 required at the very least a more elaborate presentation of the facts.

On October 8, 1974, the parties submitted a second stipulation requesting that a penalty of \$1000.00 be imposed. The parties therein stated that Mr. Cooper's ability to pay is "scant" and stated that the landfill operated at a loss for 1972 and 1973. The Board submitted that polluting at a "net loss" was no excuse for polluting and, in addition, did not find the argument of average penalties as presented in the new stipulation persuasive.

On September 8, 1975, the Complainant Agency through its representative, the Attorney General of the State of Illinois, moved for reconsideration of the order entered by the Board on August 7, 1975, and moved approval of the Stipulation and Proposed Settlement heretofor submitted by the parties on October 8, 1974. That motion is hereby granted.

The Board finds the Attorney General's argument persuasive. Although the Board continues to discount taxable income for a polluter as a factor in establishing a just penalty for violations, the Board finds the Attorney General's presentation concerning the facts of this case as they relate to Section 33(c) of the Act as a reasonable showing that the proposed \$1000.00 penalty is fair and equitable and is adequate to meet the needs of the Act.

Notwithstanding the very lengthy complaint against Glenn Cooper for violations of the Act and the Board's Solid Waste Regulation, the following facts act as mitigation in our acceptance of the Proposed Stipulation of Facts and Settlement:

1. Mr. Cooper has sold the site to another party and no longer has any connection thereto.
2. The purchaser of the site obtained a permit for the site from the Environmental Protection Agency less than a month subsequent to the transfer of the property.
3. No violations were shown on the part of the Respondent since December 7, 1973.
4. The location of the site as a landfill location is presumptively acceptable as it is now a permitted site.

The Board therefore accepts the Proposed Stipulation of Facts and Settlement in this case.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Glenn Cooper has violated Sections 21(a), 21(b), and 9(c) of the Act; Rules 4.03(a), 5.03, 5.04, 5.06, 5.07(a), 5.07(b), 5.09, 5.10(a), and 5.10(d) of the Rules and Regulations for Refuse Disposal Sites and Facilities; and Rules 303(b), 304, 305(a), 305(c), 306, 308, and 314(f) of the Solid Waste Rules and Regulations.

2. Respondent Glenn Cooper is assessed a penalty of \$1000.00 for violation of the Act and Regulations as enumerated in (1) above. Said penalty payment to be made within 35 days of the date of this Order, by certified check or money order to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of September 1975 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board