

ILLINOIS POLLUTION CONTROL BOARD

May 23, 1974

ENVIRONMENTAL PROTECTION AGENCY)
COMPLAINANT)
)
)
v.) PCB 73-493
)
)
LOUIS DI CICCIO)
RESPONDENT)
)

STEPHEN Z. WEISS, ASSISTANT ATTORNEY GENERAL, in behalf of the ENVIRONMENTAL PROTECTION AGENCY
PAUL MARTIN, ATTORNEY, in behalf of LOUIS DI CICCIO

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on complaint of the Environmental Protection Agency, charging Respondent with violations of the Environmental Protection Act, the Rules and Regulations for Refuse Disposal Sites and Facilities (promulgated by the Department of Public Health) remaining in effect until July 27, 1973, pursuant to Sec. 49 (c) of the Environmental Protection Act, and the Solid Waste Regulations, Chapter 7, of the Board's Rules and Regulations. The complaint was filed November 19, 1973. An amendment to the complaint was filed on January 10, 1974, relating to Paragraphs 8 and 10 of the complaint.

Respondent filed his answer on March 15, 1974.

Hearing was held on April 8, 1974, at the LaSalle County Courthouse Ottawa, Illinois.

The complaint charges:

- 1) That Respondent Di Ciccio owns certain property located 1 1/2 miles south of Ottawa, Illinois, on U.S. Highway #6, which Respondent has used as a refuse disposal site;
- 2) That since July 1, 1970, Respondent has operated a refuse disposal site on his property without a permit issued by the Environmental Protection Agency in violation of Sec. 21 (e) of the Environmental Protection Act;
- 3) That from on or about July 1, 1970, and continuing every day to the filing of the complaint, including but not limited to certain dates stated in Paragraph 6 of the complaint, Respondent caused or allowed the open

dumping of garbage in violation of Sec. 21 (a) of the Environmental Protection Act;

- 4) That from on or about July 1, 1970, and continuing every day to the filing of the complaint, including but not limited to certain dates stated in Paragraph 7 of the complaint, Respondent caused or allowed the open dumping of refuse, in violation of Sec. 21 (b) of the Environmental Protection Act;
- 5) That on or about July 27, 1973, and continuing every day of operating, including but not limited to December 17, 1973, Respondent caused or allowed the open burning of refuse at the site in violation of Sec. 9 (c) of the Environmental Protection Act;
- 6) That on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of the complaint, including but not limited to certain dates specified in Paragraph 9 of the complaint, Respondent caused or allowed the open dumping of refuse at the site, in violation of Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites (hereinafter referred to as "Rules");
- 7) That on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of the complaint, including but not limited to December 17, 1973, Respondent caused or allowed open burning on the site in violation of Rule 3.05 of the "Rules;"
- 8) That on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 11 of the complaint, Respondent failed to adequately fence said site, provide an entrance gate which could be locked and post hours of operation, in violation of Rule 4.03 (a) of the "Rules";
- 9) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 12 of the complaint, Respondent failed to provide fencing, gates or other measures to control access to the site, in violation of Rule 314 (c) of Chapter 7 of the Board's Rules and Regulations;
- 10) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the

filing of this complaint, including but not limited to certain dates listed in Paragraph 13 of the complaint, Respondent failed to confine refuse to the smallest practical area in violation of Rule 5.03 of the "Rules";

- 11) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates listed in Paragraph 14, Respondent failed to provide supervision of unloading in violation of Rule 5.04 of the "Rules";
- 12) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates listed in Paragraph 15, Respondent failed to provide sufficient equipment in operational condition in violation of Rule 5.05 of the "Rules";
- 13) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 16, Respondent failed to supply sufficient equipment, personnel, and supervision to ensure that operations comply with the Act and Regulations, in violation of Rule 304 of Chapter 7 of the Board's Rules and Regulations.
- 14) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates listed in Paragraph 17, Respondent failed to properly spread and compact refuse admitted to the site in violation of Rule 5.06 of the "Rules";
- 15) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 18, Respondent failed to spread and compact refuse in layers within the cell as such refuse was deposited in the toe of the fill in violation of Rule 303 (b) of Chapter 7 of the Board's Rules and Regulations;
- 16) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates listed in Paragraph 19, Respondent failed to provide daily cover at the site in violation of Rule 5.07 (a) of the "Rules";
- 17) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint,

including but not limited to certain dates specified in Paragraph 20, Respondent failed to place a compacted layer of at least six inches of suitable cover material over all exposed refuse at the end of each day of operation in violation of Rule 305 (a) of Chapter 7, of the Board's Rules and Regulations.

- 18) That from on or about July 1, 1970, until July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates listed in Paragraph 21, Respondent failed to conduct salvage operations in an area remote from the operation face of the fill, and failed to properly store salvage materials so as not to create a nuisance, rat harborage, or unsightly appearance, in violation of Rule 5.10 (b) and (d) of the "Rules";
- 19) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 22, Respondent failed to confine salvage operations to an area remote from the operating face of the landfill and failed to remove all salvage materials from the site daily, or separate and store such materials so as not to create a nuisance, vector harborage, or unsightly appearance in violation of Rules 307 (b) and (d) of Chapter 7 of the Rules and Regulations of the Board;
- 20) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 23, Respondent failed to collect all litter at the end of the working day and store the litter in a covered container or place the litter in the fill, covered and compacted, in violation of Rule 306 of Chapter 7 of the Board's Rules and Regulations;
- 21) That from on or about July 27, 1973, and continuing every day of operation to the filing of this complaint, including but not limited to certain dates specified in Paragraph 24, Respondent failed to provide adequate measures to control vectors in violation of Rule 314 (F) of Chapter 7 of the Board's Rules and Regulations.

The Environmental Protection Agency's case of violations consisted of the testimony of Robert Rocha of the Agency's Division of Land Pollution Control. Mr. Rocha testified as to having inspected Respondent's property many times. His observations as to those inspections were memorialized in his reports, Environmental Protection Agency Group Exhibit 4.

Violation of Sec. 21 (e) of the Environmental Protection Act:

Section 21 (e) of the Act requires that no refuse collection opera-

tion, except that generated by the owner's own operation, shall be conducted without a permit issued by the Agency. Mr. Rocha testified that Mr. Di Ciccio claimed not to need a permit, because he never ran an open dump (R. 56). Mr. Di Ciccio also signed an inspection form prepared by Mr. Rocha on March 22, 1972, such form indicating that no permit had been issued by the Agency (Agency Exhibit 4-C). Testimony by Mr. Rocha also showed that material was being brought in from sources other than Respondent's activities (Agency Exhibit 10, R. 62). Respondent also admitted to receiving money from outside sources to dump on his property. His total receipts were \$2,234 and his expenses were \$802.50. Respondent intends to use the remaining funds to close up the facility (R. 112, Resp. Ex. #6).

The Board finds Respondent in violation of Sec. 21 (e) of the Environmental Protection Act.

Violation of Sec. 21 (a) of the Environmental Protection Act:

Sec. 21 (a) of the Act prohibits the open dumping of garbage. Garbage is defined in Sec. 3 (e) of the Act as waste related to food and produce handling and processing, storage and sale. The reports of Mr. Rocha, which were not rebutted in any way by Respondent, show that he noted refuse that was putrescible (Agency Exhibits 4, A, C through R), and garbage (as noted in Agency Exhibits 4, S, T). Mr. Rocha testified that when he marked putrescible material in the reports, he was in fact noting garbage at the site (R. 14).

The Board finds Respondent in violation of Sec. 21 (a) of the Act.

Violation of Sec. 21 (b) of the Environmental Protection Act:

Open dumping is defined in Sec. 3 (g) of the Environmental Protection Act as the consolidation of refuse from one or more sources at a central disposal site that does not fulfill the requirements of a sanitary landfill. The record, through Mr. Rocha's reports (Agency Group Exhibit 4) and pictures (Exhibits 5-9), shows that such material was dumped on Mr. Di Ciccio's property. Agency Exhibits 49 and P indicate the disposal of 1000 tires, old appliances, etc.

The Board finds that Respondent violated Sec. 21 (b) of the Environmental Protection Act.

Violation of Sec. 9 (c) of the Environmental Protection Act:

Sec. 9 (c) of the Act prohibits open burning of refuse, or salvage by burning except as regulated by the Board. Mr. Rocha testified to seeing open burning of refuse on the site in question (R. 63). This statement was never rebutted by Respondent. The Board finds that Respondent violated Sec. 9 (c) of the Environmental Protection Act.

Violation of Rule 3.04 of the "Rules:"

Violation of Rule 3.04 (open dumping) is proved by the same facts as needed to prove violations of Sec. 21 (b) of the Act. Since that violation has been proven, the Board finds Respondent in violation of Rule 3.04, based on the evidence found above relating to Sec. 21 (b)

of the Act.

Violation of Rule 3.05 of the "Rules:"

Proof of violation of Rule 3.05 (open burning of refuse) is the same as the proof of violation of Sec. 9 (c) of the Act. Violation of 9 (c) of the Act being established above, the Board finds Respondent violated Rule 3.05 of the "Rules."

Violation of Rule 4.03 (a) of the "Rules:"

Rule 4.03 (a) provides that before a landfill site can be placed in operation, the site must be adequately fenced, have an entrance gate that can be locked, and a posting of opening and closing hours. In the reports of Mr. Rocha, there was indicated the fact that this Rule has not been complied with (Agency Exhibits 4, B through R).

The Board finds that Respondent has violated Rule 4.03 (a) of the "Rules."

Violation of Rule 314 (c) of Chapter 7:

Rule 314 (c) of Chapter 7 requires fencing, gates, or other measures to control access to the site. Mr. Rocha's reports indicate that fencing and access to the site were inadequate to control access. (Agency Exhibits 4, S,T,U.) Agency Exhibit 7 shows fencing that the Board considers inadequate.

The Board finds Respondent violated Rule 314 (c) of Chapter 7 of the Board's Rules and Regulations.

Violation of Rule 5.03 of the "Rules:"

Rule 5.03 provides that "dumping of refuse on the site shall be confined to the smallest practicable area." All of Mr. Rocha's reports indicate that the area of dumping was not contained. (Agency Group Exhibit 4, A-D.) Agency Exhibit 6 is a photograph that shows material spread over a wide area.

Therefore, the Board finds that Respondent violated Rule 5.03 of the "Rules."

Violation of Rule 5.04 of the "Rules:"

Rule 5.04 provides that unloading shall be supervised. Mr. Rocha's reports indicated that on the days of his inspection unloading was unsupervised (Agency Exhibits 4, B-O).

This evidence going un rebutted, the Board finds that Respondent has violated Rule 5.04 of the Rules.

Violation of Rule 5.05 of the "Rules:"

Rule 5.05 provides that there be sufficient equipment on the site in order to operate the landfill according to the approved plan. There

are indications in the record that there is no equipment on the site, when Reports (Agency Exhibits 4, A & B) were completed, and that there was inadequate equipment when Reports C through O were made.

The Board finds that there being no approved plan, that it can not find Respondent in violation of a rule that measures the adequacy of equipment by what is required in such plan.

Violation of Rule 304 of Chapter 7:

Rule 304 provides that there be adequate equipment, personnel, and supervision available at the site to ensure the operation's compliance with the Act, Regulations, and permit. Mr. Rocha's reports indicate that sufficient equipment was not on the site when making some of his reports (Agency Exhibits 4, S,T, and U). It should also be noted that the record indicates as to when bulldozers came on the site to compact and place cover on the site (Resp. Exhibits 7,8,9). This indicates that this type of equipment was not available for daily compacting and spreading.

Therefore, the Board finds that Respondent violated Rule 304 of Chapter 7 of the Board's Rules and Regulations.

Violation of Rule 5.06 of the Rules and Rule 303 (b) of Chapter 7:

Rule 5.06 and Rule 303 of Chapter 7 provide that as soon as refuse is admitted to the site, it must be compacted. The same evidence that applies to the violation of Rule 304 of Chapter 7 and Rule 5.05 of the Rules applies to this charge, as to compact refuse sufficiently, there must be adequate equipment on the site. Photographs taken on separate days of the same material also indicate that spreading and compacting was not done immediately (Agency Exhibit 8).

Therefore the Board finds Respondent violated Rule 5.06 of the Rules and Rule 303 (b) of Chapter 7.

Violation of Rule 5.07 (a) of the "Rules" and 305 (a) of Chapter 7:

Both of these rules apply to putting a six-inch daily cover on the site. Mr. Rocha's reports (Agency Exhibits 4, B-U) indicate that on his inspections daily cover was not applied. Photographs taken on consecutive days (Agency Exhibits 6 and 8) also indicate that daily cover has not been applied.

Therefore the Board finds that Respondent violated Rule 5.07 (a) of the "Rules" and Rule 305 (a) of Chapter 7 of the Board's Rules and Regulations.

Violation of Rules 5.10 (b) and (d) of the "Rules" and Rules 307 (b) and (d) of Chapter 7:

Both of these rules apply to salvage operations. The evidence shows

that Mr. Di Ciccio has been storing wood pallets on his property (Agency Exhibit #5). Mr. Rocha's reports indicate that the materials were kept in an "unsatisfactory" manner (Agency Exhibits 4, C-0). Also in Agency's Exhibit 5, two photographs indicate the material was not removed daily.

Therefore, the Board finds Respondent violated Rule 5.10 (b) and (d) of the "Rules" and Rule 307 (b) and (d) of Chapter 7 of the Board's Rules and Regulations.

Violation of Rule 306 of Chapter 7:

Rule 306 of Chapter 7 states that blown litter shall be collected daily and stored or compacted into the fill. Mr. Rocha's reports indicate that at least once while he was inspecting, litter had been a problem (Agency Exhibit 4 S). Taken along with Agency Exhibit #6, pictures showing litter over the site, the Board finds Respondent violated Rule 306 of Chapter 7 of the Board's Rules and Regulations.

Violation of Rule 314 (f) of Chapter 7:

Evidence of vectors was noted in Mr. Rocha's report of September 10, 1973 (Agency Exhibit S). Therefore the Board finds Respondent violated Sec. 314 (f) of Chapter 7 of the Board's Rules and Regulations.

It should be noted that no evidence was put on by Respondent to rebut the truth of the testimony of Mr. Rocha and the veracity of the reports

The Agency's only other witness was Arthur Kraft, an Environmental Protection Specialist with the Division of Land Pollution Control. He testified as to three ways in which Respondent could bring his site into conformance with the Regulations.

They are as follows:

- "1. (A) Cut slope down to a two-to-one ratio (Tr. 87).
(B) Cover (Tr. 87) with impervious material two feet thick (Tr. 88).
(C) Fence in area (Tr. 88).
(D) Be completed by September 28, 1974 (Tr. 88).
- "2. (A) Fill toe with clay or other suitable cover material (Tr. 80) and bring this to a two-to-one ratio (Tr. 85).
(B) Fence in area (Tr. 88).
(C) Be completed by September 28, 1974 (Tr. 88).
- "3. (A) Fill toe area with road bed material (Tr. 88) to bring area to a two-to-one slope (Tr. 85).
(B) Cover with clay or some impermeable material (Tr. 85).
(C) Be completed by July 28, 1974 (Tr. 88)."

The differences in the dates for completion between alternative 1 and 2 and alternative 3 relates to dates in which non-natural material can be brought on the site.

After Mr. Kraft's testimony, the Agency rested its case.

Respondent in his brief raised several legal issues, to which the Board now turns its attention.

The first issue raised is whether by not replying to Respondent's answers in this matter, Complainant admitted certain affirmative defenses therein contained. Respondent refers to the Civil Practice Act, wherein the rule is, all material not specifically denied is assumed admitted. Rule 308 (a) of the Board's Procedural Rules sets forth the exact opposite approach to pleadings. All allegations not admitted are presumed denied. Therefore, the Board finds Complainant has admitted to no affirmative defenses stated in Respondent's answer.

The second argument goes to whether the Agency is estopped from prosecuting Respondent, because of affirmative statements which Respondent relied on, made by Agency representatives. Respondent cites to the Board the case Wachta v. Pollution Control Board, 289 N.E. 2d 484, for the proposition that in the proper case the Environmental Protection Agency will be estopped from prosecuting violations, where it would be inequitable for it to do so. The Board finds that Respondent has not established a case against the Agency for estoppel. It appears for the entire time that Mr. Di Ciccio's property was under investigation, Mr. Rocha was submitting unsatisfactory reports, which Respondent was aware of and which reports he in fact had signed (Agency Exhibits 4 C,D,E,S,T,U,X). The Wachta case is one wherein the Board tried to deny a variance to a developer after the Sanitary Water Board had issued a permit and the developer had spent substantial sums of money in developing the property. In this case, we have an enforcement action. The Board feels to prove up a case of estoppel in an enforcement action, Respondent must meet a high burden of proof. The reason is that in an enforcement action, the Agency's duty is to bring about an end to violations of the Act and Regulations, which are promulgated to preserve the health and welfare of the community. Therefore, the Board finds that the Agency is not estopped from bringing this action against Respondent.

Respondent owns the property in question in joint tenancy with his wife (R. 103). He is 78 years old (R. 105), and has been retired since 1954 (R. 104). His major source of income is his monthly social security check of \$189 (R. 106). He has been putting fill in his property since the early 1950's when the State of Illinois began hauling in material from a test road site (R. 107). It appears that Mr. Di Ciccio is not running a commercial dumping operation. When the Agency began investigating the site, Respondent understood the suggestions of the Agency to be that he must compact and cover the area. This gave Respondent major problems because he lacked sufficient funds in order to complete this type of project. In order to raise money to rent a bulldozer (which from the record costs about \$30 per hour, Resp. Ex. 7,8, and 9), he began charging people to dump on his property, thereby compounding his violations (R. 112).

Respondent appears to the Board to be a sincere man whose only objective at this time is to stop dumping on the property and end his viol-

ations of the Act.

Testimony was introduced showing a substantial amount of fill would be available to Respondent from repair work on Boyce Memorial Drive, in LaSalle County (R. 25-28). Respondent has contacted Mr. Vincent Dettore, who testified that should Mr. Di Ciccio want fill, it would be made available to him.

It was also indicated in the record that Respondent has made arrangements for this fill to be brought to his property by the road contractor and to cover and compact the material on the site (R. 114).

The Board takes notice of the fact that Mr. Di Ciccio is of limited means. The Board also notes that part of the problem in this case could be traced to the lack of understanding of what the Agency's representatives were telling him to do. While ignorance of the law is no excuse, the Board feels no good purpose will be served by imposing a fine in this case. Any fine that the Board would impose would only cause a greater hardship on Respondent in attempting to pay for the closure of the site.

Respondent will be ordered to submit a plan to the Environmental Protection Agency detailing the closure of the site so as to comply with applicable rules and regulations of the Board.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

- 1) Respondent, Louis Di Ciccio, has violated Sections 21 (e), 21 (a), 21 (b) and 9 (c) of the Environmental Protection Act, Rules 3.04, 3.05, 4.03 (a), 5.03, 5.04, 5.06, 5.07, 5.10 (b) and (d) of the Rules and Regulations for Refuse Disposal Sites and Facilities, and Rules 314 (c), 303 (b), 305 (a), 307 (b) and (d), 306, and 314 (f) of Chapter 7 of the Board's Rules and Regulations.
- 2) Respondent, Louis Di Ciccio, shall within 30 days of receipt of this Order, submit a compliance plan to the Environmental Protection Agency, Division of Land Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, detailing a plan to bring the site into compliance with the Act and all applicable Rules and Regulations of the Board.
- 3) Within 90 days of the receipt of this Order, Respondent shall cease and desist all violations of the Act, and all applicable Rules and Regulations of the Board, at Respondent's landfill site.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 23rd day of May, 1974, by a vote of 5 to 0.

Christan L. Moffett
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