

ILLINOIS POLLUTION CONTROL BOARD
September 5, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 73-322
)
AJAX SAND AND GRAVEL, INC., an)
Illinois corporation; MARJORIE E.)
KRASS, as sole controlling bene-)
ficiary under Harris Trust and Savings)
Bank Trust No. 31605 and Western)
National Bank of Cicero Trust No. 3513;)
DOLORES NEVEU, as sole controlling)
beneficiary under Gary-Wheaton Bank Trust)
No. 1176; and DARNA INC., an Illinois)
Corporation,)
Respondents.)

Mr. James K. Jenks, II, attorney for Complainant.
Mr. John T. Perry, attorney for Respondents.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (Agency) filed a Complaint with the Pollution Control Board (Board) charging certain named Respondents with violations of the Environmental Protection Act (Act) and regulations because of the manner in which they operated a quarrying operation and landfill, both located at 175 East Lake Street, Bloomingdale, DuPage County, Illinois. Complainant initially had some difficulty bringing in the proper and necessary parties, because the land was held under several land trusts. Subsequent to various motions, the Agency filed a final amended Complaint on November 8, 1973.

The final amended Complaint alleged that Respondents:

1. From July 1, 1970, until November 8, 1973, caused or allowed smoke, odor, particulate, and dust emissions to be discharged from the site in violation of Section 9(a) of the Act.
2. From July 1, 1970, until November 8, 1973, caused or allowed open burning at the landfill site in violation of Section 9(c) of the Act.
3. From July 1, 1970, until July 27, 1973, operated the landfill without a permit in violation of Section 21(e) of the Act.
4. From July 27, 1973, until November 8, 1973, failed

to provide adequate vector control in violation of Rule 314(f) of the Pollution Control Board's Regulations on Solid Waste (Chapter 7).

5. From July 27, 1973, until November 8, 1973, carried on refuse consolidation in such a manner as to constitute open dumping as defined under Section 3(a) of the Act. Such open dumping violated Section 21(b) of the Act.

A hearing was conducted on November 26, 1973, in the DuPage County Courthouse, Wheaton, Illinois. The parties were working on a settlement agreement at this time and received a continuance until December 12, 1973. However, three citizens from immediate neighborhoods did testify about conditions created in the locale from the quarry-landfill operation. Severe odor problems were created by the operation (R-10, 12, 14, 42, 63, 97, 102, 128, 129). The site caused undesirable physical effects on the witnesses including nausea, stinging and burning eyes, burning throat, and disturbed sleep (R-45, 52, 53, 54, 56). The site also created a severe dust nuisance for residents (R-20, 23, 97, 98, 100). Outdoor activities had to be curtailed because of the operations at the landfill (R-106, 107). The December 12 hearing was continued until December 21, at which time the parties entered a Stipulation and Proposal For Settlement into the record (R-151 to 165).

Action on the Stipulation and Proposal For Settlement was delayed for 6 months while the Board awaited the signature of Respondent Dolores Neveu. On August 5, in a letter to the Board, her attorney stated that she would be bound by the terms of the settlement agreement.

The Statement of Facts in the Stipulation and Proposal For Settlement indicates that a 29-acre portion of the site (Parcel 1) is used for quarrying purposes, and a 7-acre portion of the site (Parcel 2) is used as a landfill. Seven employees, operating heavy machinery, work at the site, causing dirt problems for surrounding neighbors. Respondents admitted violating Section 9(a) of the Act by causing nausea, shortness of breath, disruption and curtailment of outdoor activities, and severe dust problems to residents of the area. Respondents admitted violating Section 9(c) of the Act in that fires occurred at the facility on certain named dates in 1970, 1972, and 1973. Respondents admitted violating Section 21(e) of the Act by operating a sanitary landfill without a permit. No violations of Section 21(b) of the Act or Rule 314(f) of Chapter 7 were admitted by Respondents.

The Terms of Settlement included an extensive abatement and control program as well as the payment of a \$15,000 penalty. The Terms of Settlement stated in pertinent part that:

"15. . . . This proposed settlement is expressly conditioned upon, and effective only with approval thereof in all respects by the Illinois Pollution Control Board. The parties further stipulate that all statements contained herein shall be null, void and of no effect and shall not be used in any further litigation in the event that the Board fails to approve the following terms of settlement in all respects:

- "a. Landfill or solid waste disposal activities will be discontinued on the site until such time as an operating permit therefore is issued by the Illinois Environmental Protection Agency, except for those limited activities called for by any development permit which may be issued by the Agency.
- "b. The incomplete and presently above grade 7-acre portion of the Parcel 2 will be reduced to a grade at 740 feet above sea level within a period ending seven (7) months after the issuance of an operating permit by the Agency. The running of the seven-month period will be tolled during any period which operations are curtailed on the landfill site due to employee strike or devastation by storm, tornado, fire or other Act of God.
- "c. During the grade reduction process described in paragraph b above, Respondents are to apply daily cover, as described in Rule 305(a) of Chapter 7 of the Illinois Pollution Control Board Rules and Regulations (hereinafter "Board Rules"), to all exposed cells and material in the above grade portion of Parcel 2, as well as to all exposed cells and material in the below grade excavation into which the above grade portion is to be relocated.
- "d. During the grade reduction process described in paragraph b above, Respondents will water the working area and cells in order to reduce the dust emission caused by the operation of vehicles and equipment.
- "e. Upon completion of final grading of the 7-acre portion of Parcel 2, the entire 7 acres will be covered with black dirt and completely seeded within two months after being brought to grade.
- "f. In all events, Rule 303 and Rule 305 of the Board Rules are to be specifically complied with, as well as all other applicable provisions of the Board Rules and the Act. No portion of the landfill site will be abandoned at any time unless Board Rule 305(c) is complied with.
- "g. The entire site is to be completely circumscribed with fencing, berm, gates or other adequate measures to restrict public access within thirty days after the grade reduction contemplated in paragraph b above, except that the southern perimeter of Parcel 2 is to be fenced and the access road from Circle Avenue is to be gated or otherwise restricted prior to the issuance of an operating permit by the Agency.

- "h. The present blacktop road which runs North from Lake Street to the south edge of Parcel 2 will be maintained at all times during the continuation of landfill or quarrying operations at the site.
- "i. All interior roads are to be watered or oiled whenever the dust and wind conditions require it, or whenever reasonably requested to do so by an employee of the Agency acting within the scope of his employment.
- "j. During all periods of operation of a landfill on any portion of the site, Respondents agree to retain under contract, the service of a reputable Vector (sic) control firm, corporation or individual who is to control all activities necessary to eliminate or control the existence of rats and other vectors on the site. The vector control firm, corporation or individual is to submit a monthly report of his findings and activities to Respondents which are to be maintained in a file retained at the site for examination by the Agency as delineated in paragraph k below.
- "k. The entire site will be inspected routinely by a representative of the Agency. All records pertaining to vector control will be made available to this representative upon request at each such inspection.
- "l. The artificial ditch running in a southerly direction from the site and draining into Meacham Creek will no longer be used for drainage from the site. In this respect, a pump, heretofore utilized to pump site water into the aforesaid ditch will be abandoned and removed. The actions contemplated by this paragraph will be done no later than two months after any issuance of an operating permit for the site by the Agency.
- "m. Any and all underground fires existing at the site, and particularly an underground fire discovered during an inspection of the site by an Agency representative on November 26, 1973, near the Northwest section of Parcel 2, will be completely extinguished by excavation or any practical method prior to the final cover contemplated in paragraph e hereof.
- "n. Respondents agree to a penalty of \$15,000 for the aforesaid violations found to have occurred." Payment of this penalty was conditioned on whether the Board has the authority to establish monetary penalties for violations of the Act. The Illinois Supreme Court has affirmed the authority of the Illinois Pollution Control Board to assess monetary

penalties for proven violations of the Act (City of Waukegan v. PCB [57 Ill.2 170]). Therefore, Respondents shall pay the \$15,000 penalty as specified in Order 1, below.

We hold that Respondents have violated Sections 9(a), 9(c), and 21(e) of the Act. We accept the Terms of Settlement contained within the Stipulation and Proposal For Settlement. The lives of many neighbors have been seriously disrupted but the compliance program will bring about the cessation of pollution. The penalty is reasonable under the circumstances. This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondents jointly and severally carry out all conditions of the Terms of Settlement as contained in the Stipulation and Proposal For Settlement made a part of the December 21 hearing. Respondents are jointly and severally liable for the payment of the \$15,000 penalty which is to be paid within 35 days of the adoption of this Order. Payment shall be sent to: Fiscal Services Section, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

2. Respondents shall cease and desist from all violations of the Act established in this Opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of September, 1974, by a vote of 4 to 0.


Christan L. Moffett