

ILLINOIS POLLUTION CONTROL BOARD

March 14, 1974

ENVIRONMENTAL PROTECTION AGENCY )  
COMPLAINANT )

v. )

PCB 73-336

JOE SHALLENBERGER, d/b/a SHALLEN- )  
BERGER EXCAVATING AND SEWER COMPANY )  
and SINCERO PESCALLIA )  
RESPONDENTS )

MR. DALE TURNER, ASSISTANT ATTORNEY GENERAL, in behalf of the ENVIRONMENTAL PROTECTION AGENCY  
MR. JAMES P. KELLSTEDT, ATTORNEY, in behalf of JOE SHALLENBERGER

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

This case comes to the Board on complaint of the Environmental Protection Agency, filed August 9, 1973, alleging violations of the Environmental Protection Act and our Regulations, with regard to a refuse disposal site. Hearings were held on October 24, 1973, December 14, 1973, and February 5, 1974.

The complaint alleges that: 1) At all times pertinent to this action, Sincero Pescaglia owned a certain parcel of property identified as located in the Southwest 1/4 of Section 15, Township 24 North, Range 5 West in Cincinnati Township, Tazewell County, Illinois, and such property consists of 15 acres, more or less.

2) Joe Shallenberger at all times pertinent to this action operated a refuse disposal site on the abovementioned property.

3) During the period of time from June 16, 1971, until the date this action was filed, including but not limited to certain dates listed in Paragraph 3 of the complaint, Respondents caused or allowed open dumping of refuse at the abovementioned site, in violation of Sec. 23 (6) of the Environmental Protection Act.

4) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 4 of the complaint, Respondents caused or allowed open burning of refuse at the abovementioned site in violation of Sec. 9 (c) of the Environmental Protection Act.

5) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 5 of the complaint, Respondents caused or allowed open dump-

ing in violation of Rule 3.04 of the Rules for Refuse Disposal, hereinafter referred to as Rules.

6) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 6 of the complaint, Respondents caused or allowed open burning in violation of Rule 3.05 and Rule 5.12 (d) of the Rules.

7) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 7 of the complaint, Respondents failed to clearly show the opening and closing hours and days of operation of the facility, and failed to provide a shelter for operating personnel in violation of Rule 4.03 (a) and 4.03 (c) of the Rules.

8) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 8 of the complaint, Respondents failed to confine the dumping of refuse at said facility to the smallest practical area, in violation of Rule 5.03 of the Rules.

9) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 9 of the complaint, Respondents failed to provide portable fencing to prevent blowing litter from the site and to police the fill and surrounding area to collect all scattered material, in violation of Rule 5.04 of the Rules.

10) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 10 of the complaint, Respondents failed to provide sufficient equipment in operational condition at the site, in violation of Rule 5.05 of the Rules.

11) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 11 of the complaint, Respondents failed to properly spread and compact refuse as rapidly as it was admitted to the site, in violation of Rule 5.06 of the Rules.

12) During the period of time from June 16, 1971, until this action was filed, including but not limited to certain dates listed in Paragraph 12 of the complaint, Respondents failed to apply a compacted layer of at least six inches of cover material to all exposed refuse by the end of the work day, in violation of Rule 5.07 (a) of the Rules.

13) During the period of time from June 16, 1971, until this action was filed, Respondents failed to provide a compacted layer of cover material at least two feet in depth, over the entire surface of all completed portions of the fill within six months following final placement of the refuse, in violation of Rule 5.07 (b) of the Rules.

14) On or about April 6, 1972, and July 20, 1972, but not limited to those dates, Respondents failed to prohibit scavenging operations at the site, in violation of Rule 5.02 (a) of the Rules.

On February 13, 1974, the parties submitted a joint stipulation as to facts in the case.

It was stipulated that until August 29, 1973, Joe Shallenberger and Sincero Pescaglia owned the property described in Paragraph 1 of the Complaint. After August 29, 1973, the property was held solely by Joe Shallenberger.

It is stipulated that at all times pertinent to this action the site was used as a refuse facility.

It is stipulated that during the period charged in the Complaint and particularly the dates set forth in Paragraphs 3,4,5,6,9,11,12,13 and 14 of the Complaint, Respondents operated the site in substantial violation of Sec. 9 (c) and 21 (b) of the Environmental Protection Act and Rules 3.04, 3.05, 5.12 (d), 5.04, 5.06, 5.07 (a) (b), and 5.02 (a) of the Rules, as charged in the Complaint.

It is stipulated that Respondents applied for a permit to operate the site as a refuse disposal facility which was received by the Agency on or about Sept. 9, 1971, and the application was denied by the Agency on October 27, 1971, because the application lacked information. On March 6, 1972, the Agency received a letter from Mr. Pescaglia inquiring about a permit. On March 15, the Agency responded that it had not received any additional information in regards to Respondents' application.

It is stipulated that if called to testify, Gilbert Stauffer, sanitarian with the Environmental Protection Agency, would testify that he visited the site in question on June 16, 1971, June 17, 1971, July 20, 1971, July 29, 1971, August 5, 1971, August 6, 1971, August 26, 1971, December 3, 1971, January 27, 1972, and January 28, 1972, and on those dates observed apparent violations of the Act and Rules charged in the Complaint on those dates.

It is stipulated that if called to testify David Beck, sanitarian with the Environmental Protection Agency, would testify he visited the site in question and observed apparent violations of the Act and Rules.

It is stipulated that if called to testify David Lambert, sanitarian with the Environmental Protection Agency, would testify that he visited the site on January 12, January 27, January 28, April 6, July 19, July 20, September 5, September 6, October 13, December 8, 1972; February 6, March 28, April 19, May 23, June 29, July 11, and July 12, 1973, and that he observed apparent violations of the Act and Rules charged in the Complaint on these dates.

It is stipulated that if called to testify John Diefenbach, sanitarian with the Environmental Protection Agency, would testify that he visited

the site on February 29, 1972, and observed apparent violations of the Act and Rules as charged in the Complaint on that date.

It is stipulated that if called to testify Mrs. Susan Kortkamp, employed by the Tazewell County Department of Public Health, would testify that she visited the site on August 12, 1972, and observed apparent violations of the Act and Rules as charged in the Complaint on that date.

Evidence, in the form of the stipulation, shows violations of all charges alleged in the Complaint by the Agency. Testimony at the hearing was entered to help the Board reach a proper Order and penalty.

The Board finds Respondents in violation of all charges alleged in the Complaint, on all dates, and for the period of time charged.

Two witnesses testified for Respondents to offer evidence to mitigate the violations. The first was one of the Respondents, Sincero Pescaglia. He testified that the site was used to dump building material and wood pallets that were generated in the construction work of Mr. Shallenberger and himself. He testified further that there was no other appropriate dump in the area to handle this type of refuse (R. 14). The tract is not near any major highway and the area for dumping is a swamp (R. 15). Cover was not applied on the site daily, but cover was periodically placed on the material (R. 16). There was also no material that deteriorates quickly placed in the piles. There has been garbage dumped on the site (see Agency Ex. 2 & 5), but the witness testified that neither Respondents nor agents of Respondents have ever dumped garbage on the site. He felt that trespassers have been coming onto the site and doing this dumping. The site is private and not held to be a public dump (R. 17). The witness further testified that the lock on the entry gate has been broken numerous times (R. 18).

The record shows that Respondents applied for a permit to construct an to operate on September 9, 1971. (Stipulated Ex. A) This application was denied for inadequate information on October 27, 1971 (Stipulated Ex. B). On March 2, 1972, Mr. Pescaglia wrote inquiring about the permit (Stipulated Ex. C), and on March 13, 1972, the Agency informed him that no further information had been received by the Agency (Stipulated Ex. D).

The witness further testified that the area around his site had other pollution sources (See Agency Exhibit 12 showing other sites). These include the Powerton Station of Commonwealth Edison, two auto junk yards, and others (R. 23, 29). He further stated that the area that the dumping uses is a swamp (R. 28). The witness further testified that there had been no other complaints about the dump except those of the Agency.

William L. Waldmeier, mayor of Pekin, was next to testify for Respondents. He testified to the fact that there was no other public dump in the area that would accept the kind of material Respondents are dumping. The city of Pekin landfill will not accept this type of material because they have had problems with compaction (R. 43).

It must be noted that this action was brought under the Rules and Reg-

ulations for Refuse Disposal which were continued in effect by Sec. 49 (c) of the Environmental Protection Act until new regulations were enacted by the Board. The Board did on July 19, 1973, enact new regulations when it adopted the Solid Waste Regulations, Chapter 7. Since the action was brought after that date, all charges for the period of time between July 19, 1973, and the bringing of this Complaint are dismissed.

The Board in writing an Order on this matter has taken into consideration all of the elements described in Sec. 33 (c) of the Environmental Protection Act. We note that Respondents have no other place to dump their material in the area. We also note that the area where Respondents dump is one of heavy air pollution (Powerton Station) and that there are other junk yards in the area. The Board finds that this does not excuse Respondents from their multiple violations of the Act and Regulations for such an extended period of time.

The Board will order Respondent to cease and desist all violations of the Act and Regulations applicable this date, within 120 days of the receipt of this Order. In the interim, Respondent will have 90 days to apply for the appropriate permit and submit a compliance plan to correct all violations to the Agency.

The Board assesses a penalty of \$1000 for the violations detailed above. It is noted that testimony offered by Respondent as to the problem with proper disposal has been considered. Mr. Pescaglia no longer owns any interest in the property, and so only the monetary penalty order shall apply to him.

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) Respondents, jointly and severally, shall pay to the State of Illinois the sum of \$1000 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
- 2) Joe Shallenberger, d/b/a Shallenberger Excavating and Sewer Co., shall, within 90 days from the receipt of this Order, submit a proper permit application as provided for in Chap. 7 of the Regulations of the Pollution Control Board, containing a compliance plan for abatement of all violations of the Act and Rules. Approval of the permit shall be construed as Agency acceptance of the compliance plan.
- 3) Joe Shallenberger and Shallenberger Excavating and Sewer Co. shall within 120 days from the receipt of this Order cease and desist all violations of the Act and presently applicable solid waste regulations.

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 14<sup>th</sup> day of March, 1974, by a vote of 5 to 0.

Christan L. Moffett