

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1973

Donald LeRoy Kneeland, Sr.,)
)
 Complainant,)
)
 vs.)
) PCB 73-164
City of Zion,)
)
 Respondent.)

Mr. Donald LeRoy Kneeland, Sr., on his own behalf;
Mr. Lawrence Inglis, on behalf of the City of Zion.

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

On April 24, 1973, Complainant, Donald LeRoy Kneeland, Sr., a resident of the City of Zion, filed complaint against Respondent, City of Zion, Lake County, Illinois, alleging continuing violation of Section 3 (1) and 21 (a) of the Environmental Protection Act.

Complainant brought this action in his own right as a resident of the City of Zion and presented his case without aid of counsel. The Environmental Protection Agency is not a party. Complaint was filed on a form provided by this Board and Complainant charged thereon as follows:

Rat infestation of Landfill and nearby residential neighborhood. Dumping of garbage and other refuse outside Landfill gate. Refuse frequently blown from Landfill site, by wind, into residential area. Dumping of refuse in vacant lots.

Beginning on July 7, 1969, Respondent has operated a landfill site in the northwest corner of its city limits. Complainant's home is located approximately one-half block from the subject landfill site.

On June 27 and 29, 1973, hearings were held in this cause. At those hearings, Complainant introduced no evidence to substantiate his allegation of rat infestation of the landfill and nearby residential neighborhood (R. 54). Respondent's witness,

James Whitt, city engineer, testified that he has visited the landfill on virtually every day of its operation and has never observed any evidence of rats (R.93).

Respondent's witness James Patrick Conaway, a Lake County Health Department sanitarian, Finley Gustafson, of the Orkin Exterminating Company, and Robert Corder, city health officer, all testified that they had never observed any evidence of rats at the landfill site (R. 126, 137, 140).

On March 22, 1973, Complainant brought a bag containing what he believed to be a dead rat to Robert Corder, Respondent's police chief and health officer. The animal was subsequently identified as a domestic Guinea Pig (R. 140). During the hearings, Complainant withdrew his charges regarding rat infestation (R.55).

Complainant presented evidence in the form of photographs and testimony to show that refuse and garbage had been deposited on various privately owned parcels of land (vacant lots). Respondent acknowledged that private citizens illegally dump refuse and garbage in vacant lots throughout the City. Respondent's witness, Robert Corder, chief of police, testified that his department has made serious efforts to control the problem. Chief Corder stated that his officers have special orders to arrest persons found dumping on either city or private property and that his officers frequently search through the illegally deposited rubbish in an effort to secure evidence of the perpetrators (R. 143). Police patrols and investigations have resulted in arrests and convictions (R. 142).

The owners of the vacant land upon which trash is deposited are notified by Respondent that they must remove the trash and warrants are issued if they fail to comply. To assist compliance, Respondent has a standing offer to haul the trash away at a charge of \$10.00 per truckload (R. 146).

The question before this Board is whether Respondent, which has ordinances against illegal dumping and has made serious efforts to combat the problem, may be held liable for illegal dumping of garbage and refuse on private property by private citizens, i.e., whether Respondent has "caused or allowed" open dumping. There is no evidence that Respondent has caused illegal

dumping on private property and this Board is of the opinion that the remedial actions detailed above negate liability under any reasonable construction of the term "allowed."

Complainant's remaining allegations are that Respondent has caused or allowed the dumping of garbage and other refuse outside the front gate of its landfill and that papers from said landfill are borne by the wind into adjacent residential property.

It is uncontradicted that, from time to time, persons illegally dump garbage and trash at the entrance to the landfill. Such dumping occurs at night or on weekends. Police Chief Corder testified that the landfill area is the most heavily patrolled area in the city and that arrests for illegal dumping have been made (R. 141). The landfill is open six days a week for the use of residents. Complainant acknowledges that Respondent is not, itself, dumping at the entrance of its landfill (R. 17) and that Respondent removes any illegally deposited garbage or refuse from the entrance area on the following morning (R. 48).

Respondent's witness, James Whitt, city engineer, testified that when the landfill began operation in July of 1969, three 55-gallon drums were placed at the entrance of the site for the convenience of persons who might wish to dump after operating hours (R. 88). However, the drums frequently overflowed and a 30-yard dump truck body was put in their place (R. 88). This container also overflowed and, by April of 1973, all containers for after-hours dumping were removed and such dumping was prohibited (R. 89).

Respondent's facility is surrounded by a six-foot Cyclone fence and a five-foot berm (R. 85). The fence catches most of the wind-borne paper; however, Respondent, in its Brief (Pg. 4) acknowledges that a problem exists. Paper which escapes is collected by Respondent's employees and Boy Scout troops.

Respondent's Exhibit #6, an inspection report by the Environmental Protection Agency dated June 25, 1973, states in part that the subject site "is being operated in general compliance with the requirements of this Agency and the Environmental Protection Act." Complainant, himself, testified that "it's not the city's fault; the city is trying to do a good job," (R. 7) and that the landfill site is presently in "beautiful condition" (R. 40, 41).

It appears to this Board that Respondent is making a good-faith effort to operate a modern, clean landfill facility and to keep both public and private land within its jurisdiction free from litter. The problems Respondent has encountered are similar to those faced by every city government in this State. The problem involved is a small percentage of persons who carelessly dump garbage and refuse wherever it fits their convenience.

However, the difficulty cannot absolve Respondent of liability for its solution. Complainant has the right, which we will enforce, to enjoy his property free from litter and wind-borne paper. Respondent has the duty to keep its property free from refuse and garbage.

Complainant has specifically requested, at the hearings (R. 177) and in his Brief, that no money penalty be levied. In this we concur, as a fine would serve no purpose in the instance.

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 Respondent, City of Zion, shall:

1. Respondent is hereby ordered to exercise the utmost diligence to maintain the entrance to its landfill site and its streets.
2. Respondent is further ordered to employ all means necessary to prevent the accumulation of wind-borne litter on property in the vicinity of its landfill facility.
3. File a progress report with the Environmental Protection Agency within 90 days from the date of this Order. Said progress report shall detail the measures Respondent intends to pursue in order to abate the conditions found herein.

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 11th day of October, 1973, by a vote of 4 to 0.

Christan L. Moffett