

ILLINOIS POLLUTION CONTROL BOARD

January 30, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-4
)
 BESSIE LENZ and RICHARD A. LENZ,)
 individually and d/b/a)
 CHARLES LENZ DISPOSAL COMPANY,)
)
 Respondents.)

Nicholas G. Dozoryst, II, Assistant Attorney General for the EPA
Bernard McDevitt Attorney for Respondents

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

Respondents are the owners of 19 acres in Palos Hills, Cook County, Illinois which had been used as a refuse disposal site for a number of years. The Environmental Protection Agency has alleged that Respondents operated the refuse disposal site without an EPA permit; allowed the open dumping of garbage and refuse; allowed refuse to be deposited in standing water; and are guilty of a number of housekeeping violations, including inadequate fencing of the site and failure to provide adequate shelter, heating, lighting, water and toilet facilities for employees. The principal charge is that Respondents have failed to provide adequate daily and final cover for the material deposited on the site. The violations were alleged to have occurred on August 3, 1970, September 11, 1970, October 14, 1970, January 11, 20 and 21, 1971, February 25, 1971, June 7 and 8, 1971 and December 28, 1971.

Respondents alleged that the Village of Palos Hills had licensed them to operate the landfill, that they had operated it with a proper control of rodents and pests and had closed the landfill operation on February 18, 1972. They claimed that their application for a State registration had not been acknowledged by the State.

When the case was called for hearing in June 1972 the attorneys submitted documents showing that the land had not been used for refuse disposal since February 18, 1972, that large quantities of fill dirt had been hauled onto the property during the spring, and that it was anticipated that another 12,000-15,000 cubic yards of dirt would be brought onto the property during the following five months for the purpose of applying final cover. An EPA inspection

report showed that cover which had been applied was of inadequate depth. The parties agreed that if later inspection revealed compliance in the application of final cover, the recommended fine would be \$1500.

It seems to us that the parties should have, at that point, been ready to submit the case to us for our decision and an order that final cover be applied. They chose not to do so but postponed further hearing until after the October 31, 1972 inspection date. When that inspection by the EPA revealed that final cover had not been completed, the agreement regarding penalty was rescinded. The matter then proceeded to a hearing on the merits.

The EPA submitted inspection reports showing that the violations had in fact occurred on the dates alleged. Photographs taken by Agency inspectors support the Agency's contention that there was a gross amount of uncovered garbage and refuse on Respondents site. The later photographs indicated that Respondents were making a better effort to cover the debris but the cover was still inadequate. There is clear evidence that Respondents allowed the open dumping of garbage and refuse.

Respondents had submitted an Application to register the landfill site, but because of the violations, the Agency rejected the Application. On August 14, 1970 and again in October 1970 the Environmental Protection Agency notified Respondents to immediately cease all deposition of materials at this site. Respondents did not comply with this order until February 18, 1972.

The site was not used for refuse disposal purposes following February 18, 1972. Large quantities of fill dirt were brought onto the property but because of adverse weather conditions final cover was not completely applied by the agreed October 31, 1972 deadline. The Agency witness testified that the summer of 1972 had been unusually wet and that the weather condition would interfere with the proper application of the cover. Inspection on October 31, 1972 revealed that 95% of the site had some cover and that about 50% of the site had the required two feet of final cover. There was no leachate, no rats or mosquitoes and no litter.

Respondent submitted weather service reports showing the precipitation during 1972 to be: July 2.86", August 6.19", September 5.75", October 3.62" and November 3.18". Rain occurred on more than one-half of the days in each of those months. Respondent requested that he be permitted to complete the work in May 1973.

We find that the violations were serious, that Respondents ignored the EPA demand that they cease operations for a number of months and that the penalty originally agreed upon by the parties in the

amount of \$1500 is entirely justified by the evidence. We further find that Respondent's failure to apply final cover by the desired date was due to circumstances beyond his control and that the request for an extension of time to May 1973 for the application of final cover is reasonable. We will, therefore, impose a monetary penalty in the amount of \$1500, order Respondents to cease and desist from all operations and to close the site and apply final cover by May 15, 1973.

ORDER

It is ordered that:

1. Respondents shall pay to the State of Illinois by March 9, 1973 the sum of \$1500 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.
2. Respondents immediately cease and desist from all the violations found in this proceeding and immediately cease the deposition of refuse or garbage materials at the site.
3. That final cover be applied by May 15, 1973.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 30th day of January, 1973 by a vote of 3 to 0.

Christan L. Moffett

