

ILLINOIS POLLUTION CONTROL BOARD
January 20, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
) #71-283
 v.)
)
 PERCY LOGAN and)
 MRS. HUMPHREY LOGAN)

MR. LEE CAMPBELL, ASST. ATTORNEY GENERAL, ON BEHALF OF ENVIRONMENTAL
PROTECTION AGENCY
MR. ABRAHAM LAMPKIN, ATTORNEY ON BEHALF OF RESPONDENTS

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

Complaint was filed by the Environmental Protection Agency against Percy Logan and Mrs. Humphrey Logan, Respondents, on September 23, 1971. An Amended Complaint was filed on November 9, 1971 and a second Amended Complaint filed on November 18, 1971. The second Amended Complaint alleges that Respondents have operated or allowed operation of a refuse disposal site known as "Logan's Dump" located on Patterson Road in the unincorporated portion of Will County, near the City of Joliet. Violations of regulations and statutory provisions, both before and after the adoption of the Environmental Protection Act are alleged with regard to open burning, air pollution, water pollution and land pollution and refuse disposal, beginning as early as May 27, 1970 and continuing down to the date of the filing of the complaint. A cease and desist order and the assessment of penalties in the maximum statutory amount are sought. Hearing on the complaint, as amended, was conducted on November 20, 1971. On January 12, 1972, an agreed statement of facts was submitted to the Board, which stipulation is the basis of our present Opinion and Order. It will be our Order that the Respondents cease and desist the operation of "Logan's Dump" until proper permits authorizing its operation as a refuse disposal site and facility have been obtained from the Environmental Protection Agency. We reserve the question of penalties pending submissions by Complainant and Respondents in this respect as hereinafter provided and will issue a further order subsequent to their receipt.

The agreed statement of facts sets forth that Mrs. Humphrey Logan is the owner and Percy Logan, her son, the operator of the Will County refuse disposal and auto salvage yard known as "Logan's Dump". The site contains approximately 35 acres and is bounded on the north by the Desplaines River and Hickory Creek and on the west by the Desplaines River, on the south by the Atchison, Topeka & Santa Fe

Railroad and on the east by the City of Joliet Auto Pound and Refuse Disposal Site. Sugar Run Creek traverses the site and discharges into the Desplaines River. On January 26, 1967, the Illinois Air Pollution Control Board ordered Mrs. Logan to cease and desist the open burning of refuse on the site. Notwithstanding the receipt of this order, Mrs. Logan and her son have continued their operation in violation of the law, both as to open burning and in other respects, which continuing violations have resulted in the present complaint.

The stipulation states that Respondents caused or allowed the open burning of refuse on the subject site on May 27, 1970, June 3, 1970, June 9, 1970, November 7, 1970, December 28, 1970, January 2, 1971, April 25, 1971, April 30, 1971, July 3, 1971 and September 10, 1971, in violation of the Rules and Regulations Governing the Control of Air Pollution (Air Rules), and the Rules and Regulations for Refuse Disposal Sites and Facilities (Refuse Rules), and from and after July 1, 1970, in violation of Section 9(c) of the Environmental Protection Act (Act).

The stipulation further states that on October 28, 1971, two trailers containing approximately 100 drums of volatile and flammable waste liquids and chemicals caught fire and produced great quantities of dense black smoke, visible for miles around, and resulted in noxious odors, similar to that of burning paint or paint by-products. The dense black smoke lasted about four hours and continued smoldering into the following day. The cause of the fire is stated to be unknown but the parties agree that the event constituted open burning in violation of Section 2-1.2 of the Air Rules, Rule 3.05 of the Refuse Rules and Section 9(c) of the Act.

As a consequence of this incident, the Attorney General filed a complaint for injunction in the Will County Circuit Court on October 29, 1971, resulting in the entry of a temporary restraining order. On November 30, 1971, a consent decree and permanent injunction were entered by which Respondents were permanently enjoined from causing or allowing the open burning of combustible materials and volatile or inflammable liquids at the subject site. The stipulation states that while the causes of the fires described were not known to Respondents, Respondents allowed the handling of inflammable materials, failed to take adequate precautions to prevent open burning and failed to furnish adequate equipment to prevent open burning in consideration of the known hazards, or those which should have been known. On all dates when burning occurred dense black smoke, noxious odors and debris were emitted or discharged from the dump into the atmosphere, causing air pollution which, prior to July 1, 1970, violated Section 3 of the "Air Pollution Control Act" and subsequent thereto, violated Section 9(a) of the Environmental Protection Act.

The stipulation recites that Percy Logan and William Hatfield, in 1970, entered into a verbal agreement for the use of the dump site by Mr. Hatfield's company, J & B Industrial Service, and as a result of this agreement, Mr. Hatfield or his agents, dumped drums of liquid waste on the property under Percy Logan's supervision. These drums contained restaurant grease, sludge, oil, waste paint and paint by-products, which had been picked up from Whitco Chemical Company, Barker Chemical Company, Stress & Reuter, Abbott Laboratories and Valspar Paint Co. The contents of these drums were deposited several times a week between August 1, 1970 and September 1, 1971 in shallow trenches on the dump property, dug by Percy Logan, which trenches were covered with dirt and fill. However, during October, 1971, the contents of the drums were dumped directly on the ground in close proximity to the Desplaines River where pools of waste contaminants formed, which subsequently discharged into the Desplaines River. Photographs of this dumping of liquid waste contaminants on October 19 and October 20, 1971 are appended to the Stipulation as Exhibit 4. A memorandum of the observations on these dates was made by Ted Denning of the Environmental Protection Agency. The stipulation sets forth that the dumping of liquid chemical waste and other contaminants on October 19 and 20, which resulted in discharges of sludge, oil, scum, paint and other materials producing coloring of the water and noxious odors in the Desplaines River violated Rule 103(a), (b) and (c) of Sanitary Water Board Regulation No. 8 (SWB-8). Similar discharges of chemicals and other contaminants causing odor and discoloration of the Desplaines River were observed by members of the Army Corps of Engineers at Brandon Lock and Dam on approximately twenty occasions in the six-month period prior to October 19, 1971. These discharges are conceded to violate Section 12(a) of the Environmental Protection Act.

In an attempt to build a dike to prevent Mrs. Humphrey Logan's home from being flooded by the Desplaines River, Percy Logan bulldozed materials, including construction debris, refuse, empty drums, dirt and other materials to the edge of the Desplaines River, some of which materials ended up in the river, the results of which activity have been photographed and appended to the Stipulation. (Exhibit 8). This activity is conceded to violate Section 12(d) of the Act.

The dump has operated as a refuse disposal site since July 1, 1970 without a permit from the Environmental Protection Agency in violation of Section 21(e) of the Act. Inspections made November 1, 1971 and November 4, 1971 by personnel of the Environmental Protection Agency disclose the presence of demolition, putrescible, combustable and hazardous materials on the site. Open dumping is conceded in violation of Section 21(b) of the Act and Rule 3.04 of the Refuse Rules. Photographs taken on these dates (Stipulation, Exhibit 9) portray this condition. Failure to spread and compact and to limit the dumping to the smallest practical area violate Rules 3.03 and 3.06 of the Refuse Rules. Failure to cover exposed refuse violates

Section 5.07 of the Refuse Rules, and failure to post proper signs violates Rule 4.03(a) of the Refuse Rules.

Failure to obtain written approval for deposit of liquid waste contaminants violated Section 5.08 of the Refuse Rules. The Stipulation, Exhibit 11, contains a portion of the transcript of the deposition taken of Percy Logan in which it is conceded that a permit to allow the dumping of septic wastes has never been received and the dumping of septic wastes with Percy Logan's permission is likewise conceded.

As a consequence of correspondence between the Agency and Percy Logan, some effort was made to improve the condition of the site and spread and compact the exposed refuse during the month of January, 1971. The extent of this improvement and whether the dump is now in compliance with the applicable rules are not clear from the Stipulation. Representatives of the Environmental Protection Agency inspected the site on January 8, 1972, at which time pictures were taken depicting its present condition, which will be submitted to the Board together with a report of the inspection.

Paragraph 29 of the agreed statement of facts states as follows:

"The Agency believes that a substantial penalty is warranted in this case. Respondent disputes this, and the parties are hereby submitting the issue for determination by the Board."

On the basis of the agreed statement of fact, it is difficult to conceive of a more obnoxious operation or one that has been more successful in violating virtually every regulation and statutory provision relating to open burning, open dumping, air pollution, water pollution and unauthorized operation over a four-year period.

The Board finds that Respondents, Percy Logan and Mrs. Humphrey Logan, by their ownership and operation of the "Logan Dump", have conducted open burning in violation of Section 2-1.2 of Chapter II of the Rules and Regulations Governing the Control of Air Pollution on twelve occasions, in violation of Section 9(c) of the Environmental Protection Act on nine occasions, and in violation of Rule 3.05 of the Refuse Rules on twelve occasions; that respondents have caused air pollution in violation of the Air Pollution Control Act on three occasions and in violation of Section 9(a) of the Environmental Protection Act on eight occasions. That Respondents have violated Section 1.03(a), (b) and (c) of the Sanitary Water Board Regulation No. 8 (SWB-8) on at least two occasions that have been specifically documented and on approximately twenty occasions prior to October 19, 1971. That Respondents have discharged liquid waste contaminants into the Desplaines River in violation of Section 12(a) of the Act and have created a water pollution hazard in violation of Section 12(d) of the Act. Respon-

dents have, since July 1, 1970, operated a refuse disposal site and facility without a permit, in violation of Section 21(e) of the Act, and have committed open dumping in violation of Section 21(b) of the Act and Rule 3.04 of the Refuse Rules. Respondents have failed to post signs and to spread and compact refuse, in violation of Rules 4.03(a) and 5.06 of the Refuse Rules, failed to dump refuse in the smallest practical area in violation of Rule 5.03 of the Refuse Rules and cover the refuse in violation of Section 5.07 of the Refuse Rules, which latter violations were noted on November 1, 1971 and continued through and including November 4, 1971. Respondents have failed to obtain a permit for the deposit of liquid waste in violation of Rule 5.08 of the Refuse Rules.

It will be our order that Respondent cease and desist the operation of the "Logan Dump" in all respects until it has obtained the necessary permits from the Environmental Protection Agency. A more difficult question relates to the assessment of the penalty. There is no question but that a substantial penalty is warranted. However, both the transcript of the hearing and the stipulation of fact are silent as to the economic condition of the Respondents. This factor alone is not controlling. However, when matters of penalties are considered by this Board, no useful purpose is served by assessing a penalty that is disproportionate with the economic status and capabilities of the Respondents. While disagreement on the issue of penalties is stated in the stipulation, neither party has provided the Board with any facts which will furnish guidance at arriving at a decision in this respect. We will enter such Order as is appropriate after receipt of the foregoing information. Accordingly, we will direct both the Agency and the Respondents to submit within ten days of the receipt of this order, such information and financial statistics, including operating statements and profit and loss statements as will be relevant to the Board's consideration of this subject. We will also consider the recent report of inspection and photographs taken showing the present condition of the dump.

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

IT IS THE ORDER of the Pollution Control Board as follows:

1. That Percy Logan and Mrs. Humphrey Logan shall cease and desist the operation of the refuse disposal site and facility known as "Logan's Dump" in Will County, until it has received all necessary permits authorizing such use from the Environmental Protection Agency. Any further operation shall be in accord with all relevant regulatory and statutory provisions.

2. The Environmental Protection Agency and Respondents will submit to the Board, within ten days from the receipt of this Order, all information, documentation, and financial statements, including report of inspection and photographs taken on January 8, 1972, as will enable the Board to arrive at a decision with respect to the assessment of penalties. After the receipt of this information, the Board will issue a further order assessing such penalties as are appropriate.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 20 day of January, 1972, by a vote of 4-0.

Christan Moffett