

ILLINOIS POLLUTION CONTROL BOARD
October 2, 1980

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-40
)
ARTIM TRANSPORTATION SYSTEM, INC.,)
an Indiana Corporation and)
DONALD P. MOYER, JR.,)
an individual,)
)
Respondents.)

CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

R. GARRETT PHILLIPS, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by N.E.Werner):

This matter comes before the Board on the February 28, 1980 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). Count I of the Complaint alleged that, on October 23, 1979, Mr. Donald P. Moyer, Jr. ("Moyer"), an employee of Artim Transportation System, Inc. (the "Company" or "Artim"), unloaded approximately 720 pounds of diesel fuel from the fuel tanks of the Company's semi-flatbed truck onto an area of pavement and grass just behind the Williamsville Weigh Station on Interstate Highway No. 55 ("I-55") in Sangamon County in violation of Section 21(c) of the Illinois Environmental Protection Act ("Act"). Count II alleged that the open dumping or abandonment of refuse upon the public highways on October 23, 1979 by Artim's employee caused the Company to be in violation of Rule 202(a) of Chapter 7: Solid Waste Regulations ("Chapter 7") and Sections 21(b) and 21(c) of the Act. A hearing was held on August 18, 1980. The parties filed a Stipulation and Proposal for Settlement on August 21, 1980.

It is stipulated that Artim, an Indiana corporation qualified to do business in Illinois since December 2, 1966, owns a gold-colored 1978 Mack semi-flatbed truck (the "truck") which was periodically driven by its employee, Mr. Moyer. (Stip. 2). On October 23, 1979, Mr. Moyer drove this truck, which was carrying four lifts of steel coil, into the Williamsville Weigh Station on I-55 in Sangamon County. (Stip. 2). The truck weighed in at the weigh station at

720 pounds in excess of the gross maximum load of 73,280 pounds allowable under the Illinois Size and Weight Law, (Ill. Rev. Stat. 1977, ch. 95½, Section 15-100 et seq.). After finding out that the truck contained excessive weight, Mr. Moyer drove behind the weigh station building and unloaded approximately 70 to 100 gallons of diesel fuel (i.e., about 720 pounds of diesel fuel) from the fuel tanks of the truck onto the pavement and grass just behind the weigh station building. (Stip. 3).

The parties have also stipulated that: (1) the discarded diesel fuel did not come within the exemption provided in Section 21(e) of the Act (i.e., it was not generated by the operator's own activities); (2) the disposal activity of Moyer (and, hence, Artim) at the site would require a Development Permit under Rule 201 of Chapter 7; (3) at no time was the Company issued an Agency permit to operate a solid waste management site on the property; and (4) the Company contracted with the Don Bryant Excavating Company on November 2, 1979 for cleanup of the spill area. (Stip. 2-4).

To correct the environmental problems, the excavating firm removed about six inches of earth on each side of the grass which was discolored by the spill and excavated about six inches deeper than the lower level of contamination. (Stip. 3). The hole was then filled with about eight cubic yards of top soil that was hauled to the site by the excavating company. This top soil was then leveled and raked. (Stip. 3-4).

The proposed settlement agreement provides that the Respondent Moyer admits the allegations charged against him in Count I of the Complaint in that he admittedly dumped or abandoned refuse from the Company's semi-flatbed truck upon the public highways on October 23, 1979 in violation of Section 21(c) of the Act. The Stipulation also provides that the Company admits the violations of Count II of the Complaint in that Artim "did, on October 23, 1979, empower and authorize its employee, Donald P. Moyer, Jr. to operate said truck on I-55, and in so doing, did cause or allow the open dumping of refuse (other than garbage)" in violation of Rule 202(a) of Chapter 7 and Section 21(b) and 21(c)* of the Act. (Stip. 4-5). Both Respondents have agreed to cease and desist from further violations of the Board's Solid Waste Regulations and the Act.

*The Board notes that the parties have, on page 5 of the Stipulation and Proposal for Settlement, inadvertently omitted the delineation of the Section 21(c) violation. By admitting the violations as charged against it in Count II of the Complaint, Respondent Artim has clearly admitted violating Section 21(c) of the Act. Accordingly, the Board has taken notice of, and corrected, this apparent typographical error.

(Stip. 5). Respondent Moyer has agreed to pay a stipulated penalty of \$200.00, while Respondent Artim Transportation System, Inc. has agreed to pay a stipulated penalty of \$500.00 .

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that Respondent Moyer has violated Section 21(c) of the Act and that Respondent Artim Transportation System, Inc. has violated Rule 202(a) of Chapter 7: Solid Waste Regulations and Sections 21(b) and 21(c) of the Act and orders both Respondents to cease and desist from further violations. The stipulated penalty of \$200.00 is hereby assessed against Respondent Moyer, while a stipulated penalty of \$500.00 is assessed against Respondent Artim.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Respondent Donald P. Moyer, Jr. has violated Section 21(c) of the Illinois Environmental Protection Act.
2. Respondent Artim Transportation System, Inc. has violated Rule 202(a) of Chapter 7: Solid Waste Regulations and Sections 21(b) and 21(c) of the Illinois Environmental Protection Act.
3. The Respondents shall cease and desist from further violations.
4. Within 45 days of the date of this Order, Respondents Donald P. Moyer, Jr. and Artim Transportation System, Inc. shall, by certified check or money order payable to the State of Illinois, respectively pay the stipulated penalties of \$200.00 and \$500.00, which are to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

5. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed

on August 21, 1980, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 2nd day of October, 1980 by a vote of 50.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board