

ILLINOIS POLLUTION CONTROL BOARD
November 30, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 PCB 77-344
)
FIRST NATIONAL BANK IN DEKALB,)
a/t/u Trust Nos. 174, 208A, 576)
and 626, LOUISE WAGNER ERICKSON,)
GEORGE SHIPMAN AND BARBARA SHIPMAN,)
)
 Respondent.)

MR. DEAN HANSELL, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. DANIEL L. CLIFFE, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed by the Environmental Protection Agency (Agency) on December 29, 1977. The complaint alleges in six counts violations of Rules 303(a), 303(b), 305(c), 314(e), 315 and 314(c) of the Chapter 7: Solid Waste Regulations (Chapter 7) and Section 21 of the Environmental Protection Act (Act).

The subject site is approximately eight acres within a 190 acre tract near DeKalb, in DeKalb County, Illinois. The First National Bank in DeKalb holds title to the subject land as trustee for trust numbers 174, 208A, 576 and 626. Louise Wagner Erickson is owner of a one-third undivided interest in the property. George Shipman and Barbara Shipman are the beneficial owners of the remainder of the property. From the record presented, there is no doubt that demolition wastes and other refuse were placed on this site. However, the record lacks sufficient proof that any of this refuse was placed since the Act or the regulations as alleged went into effect.

Rule 102 of Chapter 7 provides:

Rule 102: Repeals.

These rules and regulations replace and supersede Rules and Regulations for Refuse Disposal Sites and Facilities, adopted by the Illinois Department of Public Health on March 22, 1966 and continuing in effect pursuant to Section 49(c) of the Environmental Protection Act "until repealed, amended or superseded

by regulations under this Act," except that any proceeding arising from any occurrence happening prior to the applicable provision of these rules and regulations shall be governed by the above described Rules.

For the alleged Rules of Chapter 7 to apply, it must be shown that the site was in operation after the effective date of these regulations, EPA v. Ernest Palmer, PCB 76-81, 22 PCB 165 (1976), EPA v. Alex Chesney, PCB 76-40, 23 PCB 31 (1976). For this reason the Board finds the alleged Rules and Regulations inapplicable and therefore the complaint must be dismissed.

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

ORDER

It is the Order of the Pollution Control Board that the Complaint in this matter against the First National Bank in DeKalb, Louise Wagner Erickson, George Shipman and Barbara Shipman is dismissed.

I, Christan L. Moffett, Clerk of the Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30th day of November, 1978 by a vote of 50.

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