

ILLINOIS POLLUTION CONTROL BOARD

April 25, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 73-456
)
CITY OF LOVES PARK, an Illinois)
Municipal Corporation; Neil Scott,)
individually; American National Bank,)
a banking corporation; and Rogers Dry-)
wall, Inc., an Illinois Corporation,)
Respondents.)

Mr. Marvin Medintz, attorney for Complainant.
Mr. Philip Nicolosi, attorney for Respondent Loves Park.
Messrs William Snively and Philip Nye, attorneys for
Respondent Neil Scott.
American National Bank did not appear.
Messrs Charles Rogers and Ray Rogers appeared for Rogers
Drywall, Inc., without the aid of counsel.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (EPA) filed its Complaint against the Respondents on October 31, 1973, alleging violations of the Environmental Protection Act (Act) and Rules and Regulations For Refuse Disposal Sites and Facilities (Rules and Regulations) for the operation of the landfill in which each Respondent owned a parcel of land. The site, commonly known as Ballard Pit, is located on Harlem Road in or near the City of Loves Park, Winnebago County, Illinois. The Complaint was composed of four counts -- one for each Respondent -- and stated:

Count I: Loves Park owned and operated the landfill without a permit from July 1, 1970, to October 31, 1973, in violation of Section 21(e) of the Act. From July 1, 1970, to October 31, 1973 -- including certain specified dates -- Loves Park violated 21(b) of the Act and Rule 3.04 of the Rules and Regulations (open dumping of refuse), 21(b) of the Act and Rule 5.03 of the Rules and Regulations (failure to confine refuse to smallest practical area), 21(b) of the Act and Rule 5.05 of the Rules and Regulations (failure to provide sufficient equipment at the landfill according to the approved plan), Rule 5.06 of the Rules and Regulations (failure to properly spread and compact refuse as admitted to the site), and 21(b) of the Act and Rule 5.07(a) of the Rules and Regulations (failure to provide adequate daily cover for refuse).

Count II: Neil Scott owned and operated the landfill without a permit from January 1, 1973, until October 31, 1973, in violation of Section 21(e) of the Act. From January 1, 1973, to October 31, 1973 -- including certain named dates -- Neil Scott violated Section 21(b) of the Act and Rules 3.04, 5.03, 5.05, 5.06, and 5.07(a) of the Rules and Regulations.

Count III: American National Bank (ANB) owned and operated the landfill without a permit from January 1, 1973, to October 31, 1973, in violation of Section 21(e) of the Act. From January 1, 1973, to October 31, 1973 -- including certain designated dates -- ANB violated Section 21(b) of the Act, Rules 3.04, 5.03, 5.05, 5.06, and 5.07(a) of the Rules and Regulations.

Count IV: Rogers Drywall, Inc. (Rogers) owned and operated the landfill without a permit from July 1, 1970, to October 31, 1973, in violation of Section 21(e) of the Act. From July 1, 1970, to October 31, 1973 -- including certain indicated dates -- Rogers violated Section 21(b) of the Act and Rules 3.04, 5.03, 5.05, 5.06, and 5.07(a) of the Rules and Regulations.

The hearing took place in Loves Park, Illinois, on January 21, 1974. The parties and the Hearing Officer visited Ballard Pit before the morning session began. The landfill site is a former gravel pit measuring more than one thousand feet in circumference. It serves as a major recharge area for a large underground aquifer which supplies the community with its potable water supply. A portion of the west side of Ballard Pit is the subject of this Complaint. Refuse, which was dumped along the middle of the west bank, measured 300 feet long and 75 feet wide. At the hearing pursuant to Stipulation, the EPA introduced 19 exhibits (Comp. Ex. 1 through 19) to establish possible violations as to Respondent Loves Park. The City admitted having no permit, but contended that it never conducted a refuse disposal operation at the site (R-7). The remainder of the morning session's testimony went to the issue of who owned the property along the refuse-laden west bank (R-13 to R-61).

The parties and Hearing Officer reexamined the landfill during the noon recess and entered, in pertinent parts, the following Stipulation into the record when the afternoon session began:

"1. That the City of Loves Park owns a part or portion of the dumping area, including the west bank.

"2. That there has been no dumping in that area since April of 1971.

"3. That since April of 1973 the City has made great efforts to cover the west bank; their testimony would indicate approximately 400 truckloads with 10 cubic yards per truckload.

"4. That in the future they have plans to continue covering that area, and to generally rehabilitate it.

"5. That those plans further include the installation of a gate, a fence and other necessary matter to prevent further dumping.

"6. That Mr. Neil Scott is an owner of land in that general vicinity, but that his ownership may or may not include part of the west bank. That the testimony that would be presented would not indicate either that he did own or that he did not own (part of the refuse area), but that he did own property in that general area.

"7. That Rogers Drywall, Inc., an Illinois corporation, up to some point in time in 1971 did own such a business; and that in the act of their ownership they did dump drywall, only, in that area. . . . Since 1971 they have made no deposits in that particular area. . . . The area involving the Rogers Drywall portion of this enforcement case also has apparently, based on the inspection this morning, been significantly covered and improved.

"8. That Mr. Scott has in fact owned the property since sometime in 1971, and apparently he owned it after the dumping was stopped; and that he has not been active in any way, in any of the dumping or any of the other refuse in that area."

9. ANB was the prior owner of the property sold to the City of Loves Park (R-67) sometime in 1970 (R-78).

Loves Park offered additional evidence of its attempts to clean up the site; it stated the final cover could be applied by September 1, 1974 (R-72). The attorney for the EPA closed by stating that substantial penalties were not appropriate when all that needed to be done was final cover on those areas as yet uncovered (R-79).

We find that ANB and Neil Scott have not violated the Act and Rules and Regulations. Neil Scott owned no property in the area when the refuse disposal occurred (see #8 of Stipulation set out above), and insufficient evidence has been introduced to show any violations as to ANB.

We find that Rogers has violated Section 21(b) of the Act and the spreading and compacting requirements of Rule 5.06, as well as the daily cover requirements of Rule 5.07(a) of the Rules and Regulations. Rogers admitted dumping drywall at the site in 1971 (see #7 of Stipulation set out above). Photographs taken in October 1973 (Comp. Ex. 20 and 21) show the drywall on the west bank and establish a violation of Section 21(b) of the Act and 5.06 and 5.07(a) of the Rules and Regulations for that period in 1971 when such dumping occurred.

Loves Park admitted not having a permit, but argued (R-7) that the facility was not operated as a refuse disposal area. However, we find that the City has violated Section 21(e) of the Act. The deposition of large amounts of refuse in one area (Comp. Ex. 3, 5 and 8) create a presumption that the area was intended to be used as a refuse disposal site. Since Loves Park introduced no evidence to rebut this presumption, a permit violation has been proven. Furthermore, we find that Loves Park has violated Section 21(b) of the Act and Rules 5.06 and 5.07(a) of the Rules and Regulations. Rule 5.06 was violated on June 21 and 22, 1971 (Comp. Ex. 3(a) and 3(c)), February 28, 1972 (Comp. Ex. 4(a), bottom photograph), March 17, 1972 (Comp. Ex. 6(a)), and April 12, 1972 (Comp. Ex. 8(a) and 8(b)). Rule 5.07(a) was violated on March 17, 1972 (Comp. Ex. 6(a) shows the same uncovered refuse as Comp. Ex. 8(a) taken approximately one month later).

We hold that Rules 3.04, 5.03 and 5.05 of the Rules and Regulations have not been violated by either Loves Park or Rogers. First, no garbage was dumped so no violation of Rule 3.04 has been established. Second, insufficient evidence was offered to establish that refuse was not confined to the smallest practical area, as mandated by Rule 5.03. Third, no evidence was introduced by the EPA concerning the inadequacy of equipment at the site; therefore, we find no violation of Rule 5.05.

Mitigation is called for in this case where the parties have in good faith attempted to correct long-past violations causing minimal environmental harm.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Loves Park shall apply final cover to its part of the landfill site by September 1, 1974. By that time, Loves Park shall also install a gate, fence and other necessary equipment to prevent further dumping as agreed to in point number 5 of the Stipulation as set out in the body of the Opinion.

2. Rogers Drywall, Inc. shall apply final cover to its part of the landfill site by September 1, 1974.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25th day of April, 1974, by a vote of 5 to 0.


Christan L. Moffett, Clerk