

ILLINOIS POLLUTION CONTROL BOARD

December 12, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
 vs.)
)
 WILL COUNTY LANDFILL, INC., a)
 corporation, BEN HESLINGA, and)
 LEWIS COLLEGE, a corporation,)
)
 Respondents,)
 and) PCB 72-13
)
 WILL COUNTY LANDFILL, INC.,)
 an Illinois corporation, and)
 BEN HESLINGA,)
)
 Respondents and Third-Party)
 Complainants,)
)
 vs.)
)
 ESTATE OF PATRICK D. FAHEY, Deceased,))
 and SHIRLEY FAHEY, EXECUTOR,)
)
 Third-Party Respondent.)
)
 and)
)
 LEWIS COLLEGE, a corporation,)
)
 Third-Party Complainant,)
)
 vs.)
)
 ESTATE OF PATRICK D. FAHEY, Deceased,))
 and SHIRLEY FAHEY and NORMAN CODO,)
 EXECUTORS,)
)
 Third Party Respondents.)

Douglas Moring, Assistant Attorney General for the EPA
Oscar R. Kuehn, Attorney for Will County Landfill, Inc. and Ben Heslinga
Daniel L. Kennedy, Attorney for Lewis College
Thomas C. Moran and Alec Bond, Attorneys for Patrick Fahey Estate,
Shirley Fahey and Norman Codo

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

Lewis College owns land in Lockport, Illinois upon which a landfill has been operated for a number of years. The land was leased to Patrick Fahey, who in turn leased to Will County Landfill, Inc., the current operator of the landfill. Ben Heslinga, an employee of Will County Landfill, Inc. is alleged to be the manager.

The Environmental Protection Agency charges that Respondents, the current operators and owner of the premises have been guilty of open dumping of garbage and refuse, and failure to confine dumping of refuse to the smallest practical area. The EPA also charges the operators, Will County Landfill, Inc. and Ben Heslinga, with failure to cover the refuse on a daily basis, discharging sewage without a permit, failure to spread and compact refuse and a number of housekeeping violations, i.e. failure to supervise unloading, failure to provide portable fencing to reduce the blowing of litter, failure to police the area and provide adequate equipment and failure to prevent scavenging.

Further, it is alleged that the landfill is being operated without a permit in violation of Section 21(e) Illinois Environmental Protection Act.

All Respondents have filed Third-Party Complaints against the Estate of Patrick D. Fahey, deceased and the Executor of the Estate requesting indemnity under the terms of a lease or alleging that Fahey breached the terms of the lease. Fahey moves to dismiss the Third-Party Complaints on jurisdictional grounds and for a number of reasons which would involve a consideration of the terms of the lease.

We entertain jurisdiction over the Fahey Estate solely because the Fahey Estate may have a right of possession to the site under certain circumstances. We do not determine the rights of the parties for indemnity under the lease or for a breach of contract. For a determination of these issues the parties must resort to a court of law. We assert jurisdiction only to decide those issues relating to the quality of our environment.

Upon trial the EPA submitted testimony of its inspectors along with a number of inspection reports and photographs of the landfill site. It appears that on a number of occasions there was inadequate daily cover. There was also a rather frequent finding of blowing litter at the site. The testimony revealed that there are two tractors available and they were kept in operation for ten hours a day, six days a week during good weather for the purpose of covering the refuse, but in spite of this the cover was not always adequate.

The Director of Environmental Health for the Will County Health Department, Robert Murray, testified that the over all operation of the landfill was good. He stated that the only problem was an occasional shortage of cover material. The refuse was generally compacted when it was received and the majority of the area was covered.

There was also evidence that liquid wastes and sludge were deposited at the landfill, however, we do not find this to be a violation since it was apparently done with permission of the EPA and at the request of the Will County Department of Public Health. A letter signed by the Director of the Environmental Protection Agency, authorized the landfill operator to accept liquid wastes. This letter had been written only after a site inspection by the Chief of the Bureau of Land Pollution Control, Environmental Protection Agency. This permission for the dumping of liquid wastes was later withdrawn, but the President of the landfill company, Van Heslinga, testified that he then terminated the receipt of liquid waste.

The landfill operator introduced into evidence letters from the EPA stating that the site was being operated in general compliance with the requirements of the Agency and the Environmental Protection Act. We find, however, that there were violations from time to time of a housekeeping nature, i.e. blowing litter, failure to prevent scavenging and in particular the failure to apply adequate daily cover.

The principle problem in this case is that the landfill is being operated without a permit. Will County Landfill, Inc. in February, 1972 did apply for a permit to operate a landfill, and, at the request of the EPA, submitted an engineering study. Based upon that engineering data the EPA in September 1972 denied a permit.

The landfill site is located in an old gravel pit with terrain that slopes toward the Des Plaines River. Test borings indicated that some of the refuse in years past had been deposited on the bedrock and some on thin layers of waste sand-gravel material lying over the bedrock. The test also indicated that liquid would pass through the waste sand-gravel layer at the rate of about 25 feet per day. Ground water flows toward the river at a rate of about 0.2 feet per day. Shallow wells are located between the landfill and the river.

The permit was denied because of the good possibility which exists that the ground water could become contaminated resulting in pollution of the wells and the river. No evidence of pollution from leachate had actually been submitted but the EPA indicated that the hazard did exist. The rejection of the permit included a statement that the Agency would be glad to review additional engineering if provided.

This landfill serves approximately 100,000 people located in seven municipalities. Around thirty or forty truck operators use the facility. Replacing such a facility could take a considerable amount of time. This fact along with the lack of any evidence of immediate water pollution persuades us that the landfill operator should have a reasonable period of time to make an additional effort at producing the required engineering data for the issuance of a permit. We will allow until May 1, 1973 for this purpose. If a

permit has not been issued within that time or any extensions thereof the landfill shall be closed and final cover applied along with appropriate grading.


For the violations found in this Opinion we will impose a penalty in the amount of \$1,000 against Will County Landfill, Inc. Other Respondents were apparently not active in the operation of the landfill and we will not impose a monetary penalty upon them.

ORDER

It is ordered that:

1. Respondents cease and desist from their violations of the Environmental Protection Act found herein.
2. Respondent Will County Landfill, Inc. shall close the landfill site and apply final cover and appropriate grading subject to EPA approval if an EPA permit for the operation of the landfill has not been issued by May 1, 1973. This Order for closing shall also apply to all parties who may have a right of possession and shall apply to Lewis College as owner of the premises.
3. Will County Landfill, Inc., a corporation, shall pay to the State of Illinois by January 20, 1973 the sum of \$1,000 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.
4. All Third-Party claims for indemnity or breach of contract are dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order was adopted this 12th day of December, 1972 by a vote of 4 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board