

ILLINOIS POLLUTION CONTROL BOARD

September 12, 1974

ENVIRONMENTAL PROTECTION AGENCY,)	
Complainant,)	
)	
v.)	
)	
CITY OF ROCKFORD, an Illinois municipal)	
corporation,)	
ROCKFORD DISPOSAL SERVICE, INC., a Delaware)	PCB 74-124
corporation,)	
BROWNING-FERRIS INDUSTRIES OF ROCKFORD, INC.,)	
a Delaware corporation,)	
PAUL N. SAHLSTROM, an individual, and)	
SAHLSTROM BUILDING PRODUCTS, INC., an Illinois)	
corporation,)	
Respondents.)	

Mr. James M. Jenks, II, attorney for Complainant.
 Mr. Steven M. McCarthy, attorney for Respondent City of Rockford.
 Mr. William E. Collins, attorney for Respondents Paul Sahlstrom
 and Sahlstrom Building Products, Inc.
 Mr. Richard Staples, attorney for Respondents Browning-Ferris
 Industries and Rockford Disposal Service.

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

On April 1, 1974, the Environmental Protection Agency (Agency) filed a Complaint with the Pollution Control Board (Board) alleging numerous violations of the Environmental Protection Act (Act) and the regulations. The Complaint contained six counts for violations supposedly occurring from July 1, 1970, through April 1, 1974. Complainant specified many dates throughout this period when violations allegedly occurred. The alleged offences resulted from the improper operation of three refuse disposal sites, i.e., sites I, II, and III, which are all proximately located at Peoples Avenue and Magnolia Street in Rockford, Illinois.

The Complaint charged that Respondents violated Sections 21(a), (b), and (e) of the Act by the open dumping of garbage, by violating certain regulations regarding landfills, and by operating sites I and III without a permit. Violations were charged against the Rules and Regulations For Refuse Disposal Sites and Facilities (Rules and Regulations) as well as alleged violations of the Solid Waste Regulations (Chapter 7), which superceded the Rules and Regulations on July 27, 1973. These violations allegedly occurred regularly and continually from July 1970 through the April 1 filing date for the Complaint and involved poor management practices. It was charged, for example, that all three sites failed to provide

daily and final cover, failed to supervise unloading of refuse, and failed to provide for proper control of vectors.

A hearing took place on June 24, 1974, in Rockford, Illinois. At that time the parties indicated efforts towards a settlement agreement and continued the hearing for 30 days. No members of the public offered any comments at the hearing (R-7). A second and final hearing occurred on July 25 in Rockford. A Stipulation and Proposal for Settlement was made part of the record. One citizen was present, but he did not wish to make any statement (Page 3). A signed copy of the Stipulation was received on August 7, 1974.

The Statement of Facts indicates in pertinent part that:

1. The City of Rockford (City) owns sites I, II; site III is owned by Sahlstrom Building Products, Inc.

"3. The City has contracted or agreed with each of the other Respondents herein except for PAUL N. SAHLSTROM for various periods since July 1, 1970, whereby the Respondents conducted or allowed the landfill operation on the operative site on behalf of the City.

"a. Respondent ROCKFORD DISPOSAL SERVICE, INC., (after July 11, 1973, known as BROWNING-FERRIS INDUSTRIES of Rockford, Inc.) operated Site I (as described in the Complaint filed herein) for the City from July 1, 1970, to April 14, 1971.

"b. Respondent, ROCKFORD DISPOSAL SERVICE, INC., operated Site II (as described in the Complaint filed herein) for the City from April 15, 1971, to January 30, 1972.

"c. Respondent, ROCKFORD DISPOSAL SERVICE, INC., operated Site III for the City from January 31, 1972, to July 17, 1972. Respondent SAHLSTROM BUILDING PRODUCTS, INC. agreed to this use of the property.

"4. Since July 1, 1970, in excess of 72,000 tons per year of residential refuse, lumber, demolition material, and industrial waste (paper and wood pallets) were deposited on all three Sites during their respective periods of operation.

"5. Respondent, CITY OF ROCKFORD, admits to each and every violation alleged in the Complaint filed in this action and further admits to, concedes, and assumes full and sole responsibility therefor. Each and every allegation of said Complaint is hereby incorporated by reference herein."

The Terms of Settlement indicate in relevant portions that:

"8. . . . This proposed settlement is expressly conditioned upon, and effective only with approval thereof in all respects by the Illinois Pollution Control Board. The parties further stipulate that all statements contained herein shall be null, void and of no effect and shall not be used in any further litigation in the event that the Board fails to approve the following terms of settlement in all respects:

- "a. Landfill or solid waste disposal activities have been and will continue to be permanently discontinued at all three sites.
- "b. The sites will be covered, contoured, and graded in conformance with the drawing attached hereto as Exhibit 1 titled "Contours" dated June 25, 1974, not later than October 31, 1974.
- "c. Proof Rolling, corrective grading and seeding of Sites I, II and III will be completed by October 31, 1974, including ditch work to the proposed storm sewer along Harrison Avenue.
- "d. It is contemplated that SAHLSTROM BUILDING PRODUCTS, INC., will utilize Sites II and III as a storage area. In that regard granular fill may be placed on the contours above the 140' elevation to allow access to machinery and equipment stored on the upper plateau of the area. Access to the depression shown as 115 on Exhibit 1 attached may be regraded to allow truck traffic access to an incinerator at this location for the purpose of ash removal. Existing slopes on the southeast quarter of the perimeter and adjacent to a gravel mixing operation and a well site will be reduced by October 31, 1974, by cutting back and refilling that area. Road access will be permitted on the west side of the well site. The City will provide the Agency with interim reports regarding each of the activities to be conducted pursuant to this paragraph. The reports should be submitted one month prior to each such undertaking and should include the beginning date, the completion date and a description of the activity to be so conducted.
- "e. Respondent, CITY OF ROCKFORD agrees to pay a penalty of \$15,000 for the violations admitted to in paragraph 5 above. Respondent, BROWNING-FERRIS INDUSTRIES OF ROCKFORD, INC., agrees to indemnify Respondent CITY OF ROCKFORD in the amount of \$8,500. The City in consideration of the aforesaid \$8,500 agrees to hold harmless, save, and indemnify Respondent BROWNING-FERRIS INDUSTRIES OF ROCKFORD, INC., for any expenses or costs of closure or any cost of compliance with this settlement as well as any future expenses which arise due to the

maintenance of the Sites in conformance with this agreement as well as expenses arising from any other cause.

- "f. No violation or liability is to be found or assessed as to Respondents BROWNING-FERRIS INDUSTRIES OF ROCKFORD, INC., ROCKFORD DISPOSAL SERVICE, INC., PAUL N. SAHLSTROM, or SAHLSTROM BUILDING PRODUCTS, INC.
- "g. The City and Respondent SAHLSTROM BUILDING PRODUCTS, INC. agree that all garbage, debris, and other materials will be removed from the SAHLSTROM BUILDING PRODUCTS, INC. property in the area of the incinerator referred to in sub-paragraph (d) above and disposed of in conformance with the law by October 31, 1974."

We accept the Stipulation and Proposal For Settlement entered into among the parties. We find that the City of Rockford has violated the Act and regulations as set out in the Complaint. We accept the Settlement for the following reasons. First, although violations have been numerous and long-standing, illegal operations have now ceased, and a clean-up program is underway. Second, no citizens objected to the Settlement reached by the parties. In the absence of comment we can only assume that the public interest is adequately protected. Third, the penalty is adequate. Continuous and seemingly willful violations over several years might sometimes warrant a more severe penalty, but the Board tends to be lenient towards municipalities, because taxpayers' money can be better spent on pollution control than on penalties.

We note that Respondents City of Rockford and Browning-Ferris Industries of Rockford, Inc. agree to indemnify one another as indicated in point e of the Terms of Settlement. While we approve this indemnification as part of their agreement, it should be clear to the parties that any remedy for breach of this provision lies with the courts rather than with this Board.

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. Respondent City shall cease and desist from violating those sections of the Act and regulations established in this Opinion.

2. The parties shall carry out the Terms of Settlement agreed to at the July 25 hearing as set out in full in the signed Stipulation and Proposal for Settlement received by the Board on August 7, 1974, and as essentially set out in this Opinion.

3. Respondent City shall pay a penalty of \$15,000 for the violations of the Act and regulations found in this Opinion. Payment shall be by certified check or money order made payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 61706. Payment shall be made within 35 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 12th day of September 1974, by a vote of 5 to 0.


Christan L. Moffett