

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1974

CITIZENS FOR A BETTER ENVIRONMENT,)
An Illinois Not-For-Profit Corp.,)
Complainant,)
v.) PCB 73-507
EVERETT J. LaVOIE, individually)
and d/b/a/ LaVoie Sanitary Service,)
Respondent.)

Mr. Dennis L. Adamczyk appeared for Citizens For A Better Environment
Everett J. LaVoie appeared without the aid of counsel

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

Citizens For A Better Environment (CBE) filed a Complaint against Mr. LaVoie, the owner of a landfill, on December 4, 1973. The Pollution Control Board (Board) entered an Interim Order on January 3, 1974. We ruled that the allegation (Count 7) charging Respondent with violation of a Board Order was not actionable by Complainant, and we referred the issue to the Attorney General and the Environmental Protection Agency (EPA) for appropriate action. An Amended Complaint was filed on February 19, 1974, and alleged that:

1. Respondent has operated a landfill without a permit from the EPA from August 23, 1972, through February 18, 1974;
2. Respondent has failed to provide daily cover to refuse from August 23, 1972, through July 18, 1973, contrary to Rule 5.07(a) of the Rules and Regulations for Refuse Disposal Sites and Facilities (Rules). Rule 305(a) of Chapter Seven: Solid Waste Regulations (Chapter Seven), was violated in the same manner from July 19, 1973, through February 18, 1974;
3. Respondent has not provided final cover to the refuse at the landfill from August 23, 1972, through July 18, 1973, in violation of Rule 5.07(b) of the Rules and from July 19, 1973, through February 18, 1974, in violation of Rule 305(c) of Chapter Seven.

4. Respondent has caused and allowed the emission of odors from the landfill site to such a degree as to constitute a violation of Section 9(a) of the Illinois Environmental Protection Act (Act), such violations occurring from March 29, 1973, through February 18, 1974;
5. Respondent has allowed the emission of air contaminants from the landfill site in violation of Rule 312 of Chapter Seven from July 19, 1973, through February 18, 1974;
6. Respondent has caused and allowed the open burning of refuse material at the landfill site in such a manner as to be a violation of Rule 5.12(d) of the Rules on June 4, 1973 and July 9, 1973; and in violation of Rule 311 of Chapter Seven on August 10, 1973, September 27, 1973, September 28, 1973, and October 25, 1973;
7. Respondent has provided and allowed to continue conditions on the landfill site favorable to the development of animal vectors--flies and rats--from August 10, 1973, through February 18, 1974, contrary to Rule 314(f) of Chapter Seven;
8. Respondent allowed landfill refuse to reach the banks of Spring Creek, threatening to cause water pollution from July 19, 1973, through February 18, 1974, transgressing Rules 305 and 313 of Chapter Seven;
9. Respondent allowed leachate from a field tile draining the landfill site to be discharged into Spring Creek, causing water pollution on September 8, 1973, in disregard of Rule 313 of Chapter Seven.

A hearing took place on April 23, 1974, in Watseka, Illinois. Respondent operates his landfill in a rural area several miles northwest of Crescent City in Iroquois County, Illinois. Respondent contracts to haul refuse for various legal entities in the county. Mr. LaVoie uses the landfill incident to his hauling activities when other landfills cannot accept the refuse.

The evidence clearly establishes several violations of the Act and Rules. First, Respondent admitted operating the landfill without a permit from the EPA. This is a violation of Section 21(e) of the Act. Respondent has not applied for a permit because the landfill cannot satisfy the permit qualifications (R-80).

Second, Respondent admitted not applying daily cover to the site (R-76). Forty-seven thousand (47,000) bushels of corn were dumped at the landfill sometime in the spring of 1973 and was still not covered at the time of the hearing in 1974 (R-82). An additional

57,000 bushels of corn have been dumped this year (R-76). Testimony introduced by Complainant (Comp. Ex. #2, R-10, 15, 17, 19) establishes that daily cover was not applied to refuse for long periods during late 1972 through the spring of 1973. This evidence established violations of Rule 5.07(a) of the Rules. Respondent's admissions establish violations of Rule 5.07(a) of the Rules and Rule 305(a) of Chapter Seven (superceding Rule 5.07(a) on July 27, 1973)

Third, the evidence established that open burning occurred at the site in violation of the Rules. Debris was smoldering on July 9, 1973, (Comp. Ex. #2: top photo page 19, R-27) in violation of Rule 5.12(d) of the Rules. Smoldering refuse was observed on August 10, 1973 (R-41), and it was also seen on September 27 and 28, 1973 (Comp. Ex. #3: photos 2, 3, 4, 5, 7, 8, and 9; R-47). On October 25, 1973, smoldering garbage and corn was observed (Comp. Ex. #3: photos 14, 15, and 16; R-50). This testimony was not challenged by Mr. LaVoie. Rather, Respondent stated that "hot loads" were not picked up on purpose but cannot be avoided in the business (R-79).

The other allegations in the Amended Complaint were not proven. First, the final cover requirement was not established, because CBE did not show what areas of the landfill has received the final refuse mandating final cover. Second, air pollution was not proven; although a witness stated that a strong odor of decay was noticed on the site (R-49), no unreasonable interference with any person's enjoyment of life or property was introduced. Third, the lack of adequate vector control was not proved in that no evidence was introduced that flies or rats were creating difficulties or were not adequately controlled at the site. Finally, it was not established that water pollution occurred or was threatened to occur at the landfill. No evidence of the condition of Spring Creek was introduced. Such evidence is a necessary element of proof to establish water pollution. See Environmental Protection Agency v. Holland Ice Cream and Custard Co. # 71-319; 3 PCB 587 (February 3, 1972).

In mitigation, Respondent stated that he was forced to dump refuse at his site because of the unavailability of other landfills in the county (R-74). Mr. LaVoie complained that other landfills were only open for a limited amount of time each day and would not accept "hot loads". Respondent stated that he did not operate his landfill to make a profit; in fact, the landfill now owes debts of \$1,600.00 (R-75). Respondent acknowledged that he had received notice of possible violations from the EPA at various times, but argued that since they hadn't closed him down, he thought he was not violating the law (R-78). Respondent is selling his refuse business to Kankakee Sanitation. Mr. LaVoie is also trying to sell the landfill and will apply final cover until it is adequate or until the property is sold (R-76).

In deciding on the appropriate remedy in this case, we first look to Section 33(c) of the Act. These factors, alone, would not mandate a severe penalty because little detrimental environmental impact has been shown to affect man or the environment. Other considerations influence our Order. First, Respondent's violations are willful and of long standing. Our previous Order against Mr. LaVoie [Environmental Protection Agency v. Everett J. LaVoie #72-191; 5 PCB 121 (August 8, 1972)] has not been complied with. Continued violations in the face of a Board Order over a long period indicates lack of good faith. On the other hand, some evidence was introduced suggesting Respondent has financial difficulties. We are reluctant to be too harsh in the light of his important family responsibilities. Finally, Respondent indicated a desire to get out of this line of work. We favor that decision and style our Order accordingly so that additional deliberate flaunting of the law will not occur.

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, Everett J. LaVoie, individually, and d/b/a LaVoie Sanitary Service, shall cease and desist the aforesaid violations.
2. Respondent, Everett J. LaVoie, individually, and d/b/a LaVoie Sanitary Service, shall pay a penalty of \$500.00 for the violations of the Act and Rules and Regulations that were established 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 62706. Payment must be tendered by Respondent within 35 days of the adoption of this Order.
3. Respondent shall apply final cover material, within 90 days of the adoption of this Order, on those portions of the landfill not already overspread with final cover. Within 30 days of the adoption of this Order, Respondent must post a performance bond of \$3,000.00 in a form satisfactory to the Environmental Protection Agency, to assure compliance with this final cover Order. Failure to apply final cover will cause forfeiture of this bond.
4. Respondent shall file reports with the Environmental Protection Agency 30, 60, and 90 days after the adoption of this Order, detailing the progress in applying final cover as specified in Order 3, above.

5. Respondent shall haul no additional refuse to the land-fill site, from the date of the adoption of this Order, until a permit has been received from the Environmental Protection Agency.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of June 1974, by a vote of 5 to 0.



Christan L. Moffett, Clerk