

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
 v.) PCB 72-196
)
 RAFACZ LANDSCAPING AND SOD FARMS, INC.,)
 an Illinois corporation,)
)
 Respondent.)

Samuel Morgan, Special Assistant Attorney General, for the
Environmental Protection Agency;

Joseph P. Della Maria, Jr. for Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Parker):

The Complaint filed on May 9, 1972 in this enforcement proceeding charged Walter Rafacz and Henry Rafacz, individually and doing business as Rafacz Sod Farm, with operating a landfill located near Orland Park (in Cook County) in violation of several provisions of the Rules and Regulations for Refuse Disposal Sites and Facilities. The specific violations charged were: allowing open dumping of refuse prohibited by Rule 3.04, failing to provide adequate fencing required by Rule 4.03 (a), failing to provide the shelter for operating personnel required by Rule 4.03(c), failing to spread and compact the refuse per Rule 5.06, failing to provide daily cover as required by Rule 5.07(a), failing to confine the dumping to the smallest practical area per Rule 5.03, and operating the landfill without a permit in violation of Section 21 (e) of the Environmental Protection Act.

At the public hearing held August 29, 1972, Respondents represented that only a single proper party Respondent should be named, that being Rafacz Landscaping and Sod Farms, Inc., an Illinois corporation, the lessee of the land (R.5). The Agency accepted this representation (R.6, 124), and accordingly we consider the Complaint to have been amended correspondingly. The parties also entered into the following stipulation of facts on the day of the public hearing (R.9-10):

1. Between April 22, 1971, and the institution of the instant proceedings the respondent has continuously been the lessee and operator of the land commonly known at the Rafacz Sod Farm located at 151st Street and 88th Street in Orland Park, Cook County, Illinois.

2. At various times during said period:

(a) said land had been used for open dumping;

(b) no site fencing or cable had been constructed or erected around said land to prevent such dumping;

(c) said open dumping included demolition and combustible materials;

(d) said materials had not been rapidly spread and compacted;

(e) no daily cover to a depth of six inches had been provided for said dumped materials; and

(f) the color photographs taken by Rene Van Someren on July 10, July 13, and July 22, 1972, and February 9, 1972, and hereby offered in evidence as complainant's Group Exhibit 1, truly and accurately represent conditions on said land as of said dates.

The Agency also withdrew (R. 13) the allegations of failing to have a permit (Act, Sect. 21 (e)) and failing to provide a shelter (Rule 4.03(c)).

The evidence introduced at the public hearing showed that Respondent had since about 1968 placed several thousand truck loads of loose bricks (brickbat), lumber, rocks and other demolition wastes on land located in a flood plain to make a roadway and turnaround for trucks to use in removing peat from the site (R. 35, 41, 63, 85). Mr. Henry Rafacz, President of Respondent, said that he paid about \$15.00 per load for this fill (R. 40). The record also shows that open dumping of other waste materials, including some garbage (see Group Exh. 1), tires, refrigerators, couches and the like, also took place, presumably by outsiders without permission and in spite of the fact that "no dumping" signs had been posted and enforced (R. 38, 42, 53, 65, 81, 86, 88).

An Agency investigator visited the site in April of 1971 and was assured by Mr. Rafacz that "the area would be cleaned up" (R. 96, 101), but in July of 1971 substantial piles of debris remained to be spread and leveled (see photos Group Exh. 1). While some spreading and leveling had been done by June of 1972, this work had not been completed and combustibles present on the site had been left uncovered (r. 103). By August of 1972 the leveling and spreading had been completed, and apparently the site was closed (R. 106). A cable was not strung across the site entrance until July of 1972 even though Mr. Rafacz received the first complaint about open dumping in 1968 (R. 82) and knew outsiders were engaging in dumping activities (R. 38).

Respondent's main defenses appear to be that this was not a commercial landfill operation and thus should not be treated as a landfill subject to regulation, that building demolition wastes deposited on the land for purposes of constructing a roadway should not be included in the term "refuse" as used in the Act, and that Respondent did not "cause or allow" open dumping within the meaning of the Act.

Insofar as the brick piles being used to form a roadway are concerned, we agree with Respondent that these materials do not constitute "refuse" within the meaning of the Environmental Protection Act. We do not, however, accept Respondent's contentions in respect of the dumped garbage and other putrescible materials.

The Act defines "refuse" as "any garbage or other discarded solid materials" (Section 3 (a)). While this Board has often held that building demolition wastes may constitute "discarded solid materials" under the Act, it is, of course, essential to any such holding that the materials truly have been "discarded" and not simply stockpiled for a later productive use. Here, the loose bricks and the like had been purchased and stockpiled for ongoing use in forming and extending the roadway as the sod removal operations moved along the land. The bricks had not been "discarded" within the meaning of that term as used in the Act. We are mindful, too, that the record here fails to show that the Rafacz stockpiling of these non-putrescible materials caused or might tend to cause any harmful effects upon the environment. We conclude, therefore, that the allegations of the Complaint have not been proven insofar as the brick stockpiles are concerned.

Turning now to the dumping of putrescible wastes, the record evidence shows, and the parties have stipulated, that open dumping took place, that the dumped materials were not spread, compacted or covered, and that site fencing was not provided. We believe the record adequately shows that Respondent did cause or allow the open dumping, since Mr. Rafacz was aware that it was going on for several years, knew that the "no dumping" signs were not being respected, and yet failed to fence off the area until very recently.

We accordingly find that Respondent has violated Rules 3.04 (open dumping), 4.03 (a) (fencing), 5.06 (spreading and compacting), 5.07 (a) (daily cover), and 5.03 (confinement to the smallest practical area). In view of the fact that the dumping appears not to have been extensive, and taking cognizance of the cooperation of Respondent evidenced by the recent fencing, we believe only a nominal money penalty in the amount of \$250.00 is appropriate.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Respondent shall immediately cease and desist from causing or allowing open dumping of garbage and other putresible refuse at its Orland Park sod farm.

2. Respondent shall pay to the State of Illinois by November 30, 1972 the sum of \$250.00 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 Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify the above Opinion and Order was adopted on the 24th day of October, 1972, by a vote of \$ to 0.


