

ILLINOIS POLLUTION CONTROL BOARD

January 24, 1974

Citizens For A Better Environment,)	
an Illinois not-for-profit)	
corporation, and the Environmental)	
Protection Agency)	
)	
v.)	PCB 73-181
)	
Engelhardt, Inc., an Illinois)	PCB 73-304
corporation, and the North Shore)	
Sanitary District, a municipal)	
corporation of the State of Illinois)	

Mr. Fredric J. Entin, attorney appearing for the
Environmental Protection Agency,
Mr. Alfred W. Lewis, attorney for respondents
Engelhardt, Inc. and NSSD.

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

The Citizens For A Better Environment (hereinafter called CBE) filed a Complaint on May 1, 1973, against Engelhardt, Inc. and North Shore Sanitary District (hereinafter called NSSD) alleging violations of the Environmental Protection Act (hereinafter called Act) and certain rules and regulations in the operation of a landfill in Zion, Illinois. The Environmental Protection Agency (hereinafter called EPA) filed a Complaint against the same Respondents on July 27, 1973, alleging similar violations to those set out by CBE for the landfill located in the South $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 32, Township 46 North, Range 12 East at McAvee and Beach Roads in Benton Township, Lake County, Illinois. This landfill in Zion was operated by Engelhardt, Inc. and owned by NSSD. EPA moved for consolidation on July 30, 1973, and on September 7, 1973, Complainants filed a joint amended Complaint specifically alleging that:

1. Respondents violated Section 9(a) of the Act by discharging contaminants into the environment causing air pollution from August 9, 1972, through September 7, 1973.

2. Respondents caused water pollution in violation of Section 12(a) and (d) of the Act from August 31, 1972, through September 7, 1973, by the discharge of contaminants into the environment through pumping contaminated water and leachate from the site into a nearby ditch running into Bull Creek.

3. Respondents violated Section 21(b) of the Act by allowing open dumping from July 26, 1972 through September 7, 1973.

4. Respondents violated Section 21(e) of the Act in that the permit issued to Engelhardt (July 7, 1972, Permit #1972-48) contained conditions for operation which Respondents did not comply with. This violation occurred from July 26, 1972 through September 7, 1973, the day that this amended Complaint was filed.

Various rules of the Rules and Regulations For Refuse Disposal Sites and Facilities (hereinafter called Rules and Regulations) were allegedly violated. Complainants also charged that Respondents violated certain rules of Chapter Three: Water Pollution Regulations of Illinois (hereinafter called Chapter Three). Specifically, Complainants averred that:

5. Respondents violated Rule 3.04 of the Rules and Regulations by allowing open dumping at the refuse disposal site. This occurred from July 26, 1972 through September 7, 1973.

6. Respondents violated Rule 4.03(a) and (b) of the Rules and Regulations from August 17, 1972 through September 7, 1973, by failing to post the opening and closing hours and days of operation of the site and failed to adequately treat the roads resulting in dust nuisance at the site.

7. Respondents violated Rule 5.07(a) of the Rules and Regulations from July 26, 1972 through September 7, 1973 by failing to satisfy the daily six-inch cover requirement.

8. Respondents violated Rule 5.12(c) of the Rules and Regulations from January 10, 1973 through September 7, 1973 by depositing refuse in standing water at the site.

9. Respondent Engelhardt violated Rule 404(a) of Chapter Three from August 31, 1972 through September 7, 1973 by causing or allowing effluent exceeding 30mg/l of BOD₅ to flow into a drainage ditch tributary to Bull Creek.

10. Respondent Engelhardt violated Rule 405 of Chapter Three from August 31, 1972 through September 7, 1973 by discharging effluent containing fecal coliforms exceeding 400/100 ml into a drainage ditch tributary to Bull Creek.

In March, 1972 NSSD was required by a court order to expand its facilities at the lake front site in Waukegan, Illinois. Completion of a storm sewer retention reservoir was ordered by June, 1973. NSSD contracted with Engelhardt, Inc. in March, 1972 to remove about 230,000 cubic yards of material from the Waukegan site so that the reservoir could be constructed.

The Waukegan site had at one time been used as a refuse disposal site for chemicals and articles of equipment of Abbott Laboratories, a pharmaceutical company. Engelhardt had until the end of May, 1973, to remove the soil and construct the Waukegan storm retention water reservoir.

Engelhardt, Inc. purchased a landfill site, the Zion site, the subject of this Complaint, in May, 1972, to accept the 230,000 cubic yards from Waukegan. Respondent agreed at the time of purchase to resell the site to the Waukegan Port District which planned to expand its airport -- already located across the street -- onto this landfill site. The District's commitment to purchase was contingent upon the completion of the Zion site landfill by June 1, 1973. Waukegan Port District agreed to pay Engelhardt half of his purchase price, but not more than \$50,000 for the Zion site.

Soon Engelhardt, Inc. encountered difficulties in getting a permit from Lake County authorities to use the Zion site as a landfill. To avoid the time-consuming procedure of seeking a variance, Engelhardt deeded the landfill to NSSD, which was not subject to the same permit limitations imposed on private persons. This transaction occurred in mid-July, 1972, with NSSD taking title subject to the agreement entered into between Engelhardt, Inc. and the Waukegan Port District. Work had already commenced at the site by the end of June. In August, September, and October, very heavy rainfalls hampered operations, creating delays and resulting in many neighborhood complaints. Hauling from the Waukegan site was completed in January, 1973, but water problems have delayed site completion so that by the October, 1973, hearings the landfill was still months away from compliance with the approved plan, originally scheduled for June, 1973.

Hearings were held in Waukegan, Illinois on September 12, October 10, and October 11, 1973. Witnesses called by Complainants included employees of EPA and the Lake County Health Department. Approximately six local residents also testified for Complainants. Respondents had two principal witnesses, Mr. Cooper, a Superintendent for Engelhardt, Inc., and Mr. Lewis, attorney for Respondents.

The testimony established that Respondents violated Section 9(a) of the Act. Several times during summer and fall of 1972, the site caused dust problems to neighbors (R-34, 141, 196, 211). Odor problems were pervasive on certain occasions; the strongly medicinal smell still lingered through June, 1973 (R-148, 178, 288, 194). Respondents violated Sections 12(a) and (d) of the Act by pumping contaminated water off the site (R-122, 414, 415, 455, 477, 478). Leachate was photographed running off of the site (R-233; Complainants Exhibit #21) and this was supported by the testimony (R-133).

Respondent Engelhardt violated special conditions #3 and #4 of its permit; therefore, Section 21(e) of the Act has been breached. Although Engelhardt, Inc. submitted an initial report satisfying special condition #1, no later quarterly reports were made to the EPA to fulfill special condition #4 (R-113). Engelhardt did not seek permission to discharge leachate from the site which violated special condition #3 (R-114). The evidence fails to establish that standard condition #2 was violated because Respondent's contour design (EPA Exhibit #1) sets down final contour requirements not yet implemented at the site.

Rule 4.03(a) and (b) of the Rules and Regulations was violated by Respondents. Two witnesses testified that no sign, specifying the opening and closing hours, existed at the site (R-67, 224). Second, although Respondent Engelhardt had a tank truck at the site to control the dust problem (R-413), the serious nature of this nuisance was established by the evidence (R-34, 141, 196, 221).

Rule 5.07(a) was violated by Respondents because they failed to apply six inches of cover at the end of daily operations. The inspections of July 25 and July 26, 1972 reveal that no cover had been applied (R-43). No cover was observed on several occasions in late summer and fall of 1972 (R-46, 47). This same situation persisted in January, 1973 (R-316, 319) and later in March (R-335; Complainants Exhibit #27); and even through the summer months of 1973 (R-149). Respondent Engelhardt, Inc. offered evidence that cover was always applied but that it had a tendency to erode off of the slopes because of the heavy rains. This necessitated recovering when Respondent became aware that the fill was exposed (R-456). Respondent stated that he could think of no occasion when daily cover was not applied (R-456). The Complainants' evidence refutes this claim.

The Respondents deposited refuse in standing water at various times in January, 1973 in violation of Rule 5.12(c) of the Rules and Regulations. Refuse was photographed being pushed into the ice in January, 1973 (Complainants Exhibit #27; R-325, 332, 333). Other violation dates are not established because it is unclear whether rain ponded around deposited refuse or whether, in fact, refuse was pushed into standing water.

Rule 404(a) of Chapter Three was violated by Engelhardt, Inc. on September 14 (R-228), September 18 (R-243, 244) and on October 2, 1972 (R-247). Rule 405 prescribing a limit of 400 fecal coliforms per 100 ml of water was violated on the same three dates established for Rule 404(a) in the testimony.

We do not decide whether open dumping occurred in violation of Section 21(b) of the Act and Rule 3.04 of the Rules and Regulations because of the more specific allegations established in this action. NSSD has also violated the Act and Rules. We have in the past dismissed parties from enforcement actions where owners have neither controlled nor acquiesced in the illegal

activity occurring at the site. Here, however, the purpose of the title transfer to NSSD was to bypass the safeguards of the public hearing process; therefore, NSSD clearly played an active role in causing serious environmental problems to develop at the Zion site.

The thrust of Respondents hearing defense is summarily set forth in the brief filed November 15, 1973 with the Board. At page 13 the Respondents state:

Under all the circumstances set forth, we respectfully submit that compliance with the Board's regulations has imposed an arbitrary and unreasonable hardship on the Respondents who have acted conscientiously, persistently and in good faith, to comply, under adverse circumstances, with the time limit imposed by the court order to complete the project in question within the terms of the permit issued by the Agency. For these reasons we further respectfully submit that no penalty should be assessed against the Respondents.

The Respondents, in their answer to CBE filed with the Board on July 31, 1973, admitted that there have been technical violations of the Rules and Regulations. Much of their testimony was directed at methods to complete the job within the court ordered time-table and handle the water problem which occurred on site. Four different methods were explored by Respondent Engelhardt to remove the water from the site. Initially it was pumped off the land (R-415) until Lake County pointed out that the water was not suitable for pumping from the property. In October, 1972 Respondent unsuccessfully tried to treat the water to purify it for discharge into waterways (R-416). In March, 1973 a sand and charcoal filter technique was tried but the water could not be sufficiently purified to allow it to be pumped from the site (R-418). Finally, in April Engelhardt, Inc. sought to connect into the NSSD sewer system but because of the sewer ban set down in League of Women Voters v. NSSD #70-7, #70-12, 13, 14; 1 PCB 369 (March 31, 1971), NSSD could not sign the permit. Respondent Engelhardt received a variance from the Board on August 30, 1973 (PCB #73-272) and is now properly disposing of the 5 million gallons of water ponded on the 13-acre landfill site.

We are unable to agree with Respondents that these good faith efforts to correct serious breaches of the Act and Rules, which breaches had a significant deleterious impact on the immediate community, is sufficient reason to mitigate the penalty. Respondent Engelhardt partially imposed the problem upon himself. Engelhardt, Inc. had until June 1973 to complete the project; no facts were introduced to explain why all the material had to be removed from the Waukegan site during the first half of the contract period. We can certainly sympathize with Engelhardt's

predicament faced with rainfalls double seasonal norms which occurred in August, September and October, but the evidence presented is insufficient to convince us that the material could not have been hauled in the spring.

Second, incidents occurring at the landfill not caused by the heavy rains serve to aggravate the penalty. Respondent admits that fencing was not complete when dumping began (R-402); a permanent gate was not installed until much later. As a result, neighborhood children entered the site and discovered vials, syringes, and broken bottles (R-160-175). Many of these objects were taken home and played with and later discovered by parents. Workmen for Engelhardt gave the children permission to swim in the ponded water on at least one occasion during the summer of 1972 (R-172, 182). Mr. Cooper, a general superintendent of Engelhardt, admitted that he was not aware of any county ordinance relating to landfills (R-473) and did not know about the rules and regulations regarding landfills existed until he had been working on the site for two months (R-483, 484).

Third, the testimony shows that Engelhardt, Inc. and NSSD severely affected the quality of life during the summer of 1972 by their disruption of the environment. Neighborhood activities were curtailed or canceled, and families were besieged by odor and dust. Air-conditioning was not completely effective against the problems, and for those without air-conditioning the situation was worse. Property values have also dropped in the neighborhood (R-189), but presumably, higher values will return once the site is completed.

For these reasons, mitigation is not called for in this case; this is especially true as to Engelhardt, Inc. which exclusively carried out the activities at the landfill.

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. Respondents cease and desist from all violations of the Act and all rules as established under this Complaint. Progress on the program of compliance shall be reported to the Environmental Protection Agency on a monthly basis by Engelhardt. Total compliance with the Act and applicable rules is to be achieved not later than June 1, 1974.
2. Respondent NSSD pay a penalty of \$1000.00 for its violations of the Act and rules.
3. Respondent Engelhardt, Inc. pay a penalty of \$7,500.00 for its violation of the Act and rules. Payment by each Respondent

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 shall be tendered by each Respondent within 30 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 24th day of January, 1974, by a vote of 5 to 0.

Christan L. Moffett
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