

ILLINOIS POLLUTION CONTROL BOARD  
April 12, 1990

LEFTON IRON AND METAL COMPANY, )  
INC., a Missouri Corporation, )  
Complainant, ) PCB 89-53  
v. ) (Enforcement)  
CITY OF EAST ST. LOUIS, )  
Respondent. )

Thomas Immel, Immel, Zelle, Ogren, McClain, Germeraad & Costello,  
on behalf of complainant;

Eric Vickers, Corporate Counsel for the City of East St. Louis, on  
behalf of respondent.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a complaint filed by Lefton Iron and Metal Company, Inc. ("Lefton") on March 15, 1989 against respondent, the City of East St. Louis ("City") alleging violations of section 21(a) of the Illinois Environmental Protection Act ("Act") which prohibits allowing open dumping (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1021(a)) and 35 Ill. Adm. Code 807.201 which prohibits allowing the development of a solid waste management site without a permit. The City did not file an answer to the complaint and, therefore, all material allegations are deemed denied. (35 Ill. Adm. Code 103.122(d).) A hearing was held on July 24, 1989 at which no members of the public attended. No post-hearing briefs were filed.

Lefton operates a scrap metal business on leased property located in East St. Louis. Lefton's property is bounded on the east by Brady Avenue and on the west by Converse Avenue. Brady and Converse Avenues are unpaved right-of-ways owned and controlled by the City. Lefton alleges that during the spring and summer of 1988, the City failed to provide trash collection services and allowed refuse and trash to be dumped on Brady and Converse and accumulate to the point that Lefton encountered difficulty gaining access to its property. (Complaint at par. 6-7.) Lefton states that the City was aware of the discarded refuse on its public streets and failed to respond to complaints by Lefton and other residents. Lefton alleges that the City has violated section 21(a) of the Act and section 807.201 of the Board's regulations. (Id. at par. 11-12.) Lefton requests that the Board direct the City to cease and desist from such violations and to submit a plan of compliance to the Board. (Id. at p.4.)

Two witnesses testified at hearing. Benjamin Lefton, president of Lefton, testified that he viewed the accumulation of debris on Brady and Converse Avenues. (Tr. 7/24/89 at 6.) Lefton introduced a June 10, 1988 letter from Norman Lefton, chairman of Lefton, to the mayor of East St. Louis and a June 27, 1988 letter from another resident notifying the City of the debris and asking that it be removed. ((Ex. 1, 2.) Lefton also testified that he took the two photographs which were attached to Lefton's response to the Board's Order of March 23, 1989. (Tr. 7/24/89 at 12.) These photographs of Brady and Converse Avenues were taken on April 13, 1989 and show the accumulation of discarded debris. (Tr. 7/24/89 at 12-13; Response Ex. 2, 3.) Lefton introduced two maps showing the location of Brady and Converse Avenues and noting the accumulation of the refuse. (Ex. 3, 4.) Mr. Lefton stated that the debris was still on the streets the last time he looked one week prior to the hearing. (Tr. 7/24/89 at 14.)

On cross-examination, Mr. Lefton testified that he did not know who placed the refuse on Brady and Converse Avenues. (Tr. 7/24/89 at 16.) Mr. Lefton was asked what proof he had that the City owned the property where the debris was located. (Tr. 7/24/89 at 19-20.) Mr. Lefton responded that the streets were public streets as evinced by the maps introduced into evidence. (Tr. 7/24/89 at 19-20; Ex. 3, 4.)

George Foster, coordinator of Emergency Service and Disaster Agency for East St. Louis, testified that, on the morning of the hearing, he viewed the area in question and did not see the amount of debris present as depicted in Lefton's photograph of Converse Avenue. (Tr. 7/24/89 at 30-32.) Foster testified that it appeared that some of the trash had been burned. (Id.) Foster did state that considerable debris remained on Brady Avenue. (Id.) Foster also stated that the City began an emergency city-wide cleanup effort in 1987 or 1988 and that this effort was halted in the latter part of 1988 or the early part of 1989. (Tr. 7/24/89 at 33-34.)

Section 21(a) of the Act provides that "[n]o person shall cause or allow the open dumping of any waste." (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1021(a).) The Act is malum prohibitum so that the owner's lack of knowledge of the dumping is no defense. (Meadowlark Farms, Inc. v. PCB, 17 Ill. App. 3d 851, 308 N.E.2d 829, 836 (5th Dist. 1974).) The owner of the source of the pollution "causes or allows" the pollution within the meaning of the statute and is responsible for that pollution unless the facts establish the owner either lacked the capability to control the source or had taken extensive precautions to prevent intervening causes. (Perkinson v. PCB, 187 Ill. App. 3d 689, 543 N.E.2d 901, 903 (3d Dist. 1989).)

Lefton introduced two photographs showing the accumulation of

a great deal of debris. (Response Ex. 3, 4.) Mr. Lefton testified that he took the photographs on April 13, 1989 and that the photographs depicted trash on Brady and Converse Avenues. (Tr. 7/24/89 at 12.) The evidence establishes that the debris had been at that location from the summer of 1988 until at least one week prior to the hearing in July of 1989. (Tr. 7/24/89 at 14; Ex. 1,2.) In support of its assertion that the debris was located on the public streets, Lefton introduced two maps depicting Brady and Converse Avenues and the location of the refuse. While the City's cross-examination of Mr. Lefton attempted to cast doubt on whether the debris was located on the public streets, the Board finds that Lefton established by a preponderance of the evidence that the refuse was indeed located on public streets owned by the City. The City failed to introduce any evidence to rebut Lefton's assertion that the refuse was located on Brady and Converse Avenues. At best, the City introduced some evidence that, at one point in time, the City attempted a clean-up of the area. (Tr. 7/24/89 at 33-34.) The Board finds that the City had control of the land where the debris accumulated and allowed the dumping of waste in violation of section 21(a) of the Act.

Lefton also contends that the City's conduct constitutes a violation of section 807.201 of the Board's waste disposal regulations. Section 807.201 provides that "no person shall cause or allow the development of any new solid waste management site ... without a Development Permit issued by the Agency." (35 Ill. Adm. Code 807.201.) The Board does not believe that the City's conduct in this cause constitutes the "development" of a solid waste management site which section 807.201 is designed to regulate. Therefore, the Board finds no violation of that section.

Pursuant to section 42(a) of the Act, the Board is empowered to impose a maximum penalty of \$10,000 and an additional penalty of \$1,000 for each day the violation continues. (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1042(a).)<sup>1</sup> Lefton has taken the position that, because of the City's poor financial situation, no monetary penalty should be imposed upon the City. Lefton requests that the Board enter a cease and desist order and require that the City submit a plan to bring itself into compliance with the Board's cease and desist order.

A consideration of the factors set forth in section 33(c) of the Act supports the relief requested by Lefton. (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1033(c).) Pursuant to section 33(c)(1), the Board finds the interference with Lefton's property to be substantial. The Board finds that there is no "social or economic value" to be accorded to the source of the pollution (section

<sup>1</sup> The Board notes that P.A. 86-1014 was recently enacted to increase the minimum penalty to \$10,000 and the maximum penalty to \$50,000. P.A. 86-1014 becomes effective July 1, 1990.

33(c)(2)) and that section 33(c)(3) is inapplicable to this cause. Regarding section 33(c)(4), the Board finds that, even for East St. Louis, it is technically practicable and economically reasonable to eliminate the pollution source. The Board also finds that the City has accrued some economic benefit from its failure to remove the debris to the extent that the evidence shows that the trash has interfered with Lefton's use of its property since the summer of 1988. (See, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1033(c)(5).) Although the City made an ineffective attempt to clean up the area, there has been no compliance to date. Therefore, the Board finds that section 33(c)(6) is not germane to this matter.

The Board will not impose a penalty upon the City but directs the City to remove the debris located on Brady and Converse Avenues and to cease and desist from allowing the dumping of waste on those streets so that Lefton's operation of its business and enjoyment of its property is not interfered with any longer. However, the Board does not believe that it is appropriate in this cause to require the City to submit a compliance plan; the City either cleans the area in question or it does not. The situation presented here does not necessitate that this Board put its stamp of approval on the method of ridding the area of debris.

This Opinion constitutes the Board's findings of fact and conclusions of law on this matter.

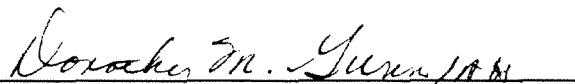
#### ORDER

Within 60 days of the date of this Order, respondent, City of East St. Louis, is hereby directed to take all steps necessary to rid Brady and Converse Avenues of all debris so that complainant's enjoyment of its property is not interfered with and to cease and desist from allowing the open dumping of waste at the location in question.

Section 41 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1042) provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 12<sup>th</sup> day of April, 1990 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board