

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1988

VILLAGE OF RIVERSIDE,)
)
 Complainant,)
)
 v.) PCB 88-54
)
 EDWIN AND MARY SUSAN KOZOYED,)
)
 Respondents.)

DAVID C. NEWMAN, ESQ., OF CARRANE, ZWIRN, NEWMAN AND FREIFELD
APPEARED ON BEHALF OF THE PETITIONER.

PATRICIA F. SHARKEY, ESQ., OF MAYER, BROWN AND PLATT APPEARED ON
BEHALF OF THE RESPONDENTS.

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

This matter comes before the Board from a March 18, 1988
complaint filed on behalf of the Village of Riverside against
Edwin and Mary Susan Kozoyed. The complaint alleges that the
Kozoyeds violated Section 21(a) and (b) of the Illinois
Environmental Protection Act (hereinafter "Act") which provide:

Section 21

No person shall:

- a. Cause or allow the open dumping
of any waste
- b. Abandon, dump, or deposit any
waste upon the public highways or
other public property, except in
a sanitary landfill approved by
the Agency pursuant to
regulations adopted by the Board.

A public hearing was held on this matter on June 8, 1988 in
Riverside, Cook County. Two persons testified for the
Complainant and two persons testified for the Respondents. In
addition, one member of the public, who was present at the
hearing, was called upon to testify. By agreement of the

parties, no post-hearing briefs were filed.

Based on the record, the Board finds that the Complainant has failed to carry its burden of proving the Respondents violated Section 21 of the Act, As a result, the Board will not enter the order requested by the Petitioner.

BACKGROUND

The Kozoyeds own and control property that is adjacent to property owned by the Village of Riverside and adjacent to property controlled by the Forest Preserve District of Cook County. The Kozoyeds' property is located in an unincorporated area of Cook County, known as Riverside Lawn. The Kozoyed's property borders the Village of Riverside but is not under the village's jurisdiction. In the complaint, the Village of Riverside claimed that the Kozoyeds are dumping, or are causing to be dumped, quantities of trash, tin cans, bottles, plastic containers, landscape waste, bricks, stones, gravel and other refuse materials on the property. Further, they alleged that a portion of these materials were being dumped or deposited on adjoining public property owned by the Village of Riverside. The Complainant requested that the Board enter an order to have the Respondents remove such waste deposits from both their own and the adjoining public property and prohibit further use of the properties as a site for dumping waste and refuse items.

At hearing, the Village of Riverside presented two witnesses and considerable photographic evidence to substantiate the allegations. The first witness called by the Plaintiffs was Chester Kendior, Jr., the Village Manager for the Village of Riverside. Mr. Kendior testified that on July 2, 1987, and on subsequent dates, he visited the site in question and found that debris including dirt, concrete, bricks, wood, pipe, metal, stones, cans and mattress springs had been dumped on both the Kozoyeds' property and on the property belonging to the Village of Riverside (R. at 24-57). Mr. Kendior stated that the village never authorized the dumping or spreading of such material on its property (R. at 53) and also stated that the debris deposited on the village's property was removed by the village while the debris deposited on the Kozoyed's property was spread over the Kozoyed's property (R. at 42).

Mr. Kendior testified that he did not see the materials actually being dumped except for one occasion after July of 1987 (R. at 54 and 59). Further, Mr. Kendior did not testify that he witnessed the piles of debris being spread over the Kozoyed's property but did present photographic evidence in an effort to show that the materials that were in the debris piles after July of 1987 were scattered throughout the Kozoyeds' property in April of 1988 (R. at 56 to 63). On cross-examination, the attorney for the Respondents was able to establish that Mr. Kendior had no accurate way of determining the property lines between the

Kozoyed's property and the village property and may not have been able to determine if the debris was actually on village property (R. at 69 to 109).

The other witness for the Village of Riverside was Mr. Durnbough, the Building and Zoning Commissioner for the Village of Riverside. Mr. Durnbough testified that he photographed the piles of debris on the Kozoyed's property (R. at 177) and he testified that he did not consider the material in the piles shown in the photographs to be clean fill or structural fill (R. at 181 to 185).

The Respondents first witness was Mr. Randy Pezza, a landscape contractor, who was hired by the Kozoyeds to deliver and spread fill on the property in question. Mr. Pezza stated that he had discussed the property boundaries with Mr. Kozoyed and also stated that the brush between the Kozoyeds' property and the village's property prevented them from dumping on the village's property (R. at 218-219). Mr. Pezza testified that his drivers knew where to dump the fill and that during his approximately fifteen visits to the site he never observed any of his material dumped on the village's property (R. at 219-221).

As to the content to the fill, Mr. Pezza stated that the fill material was the same quality of material used and classified as residential fill (R. at 222). He said that his business did not involve concrete and that the piles in the photographs that contained concrete could not have been material that his people dumped (R. at 224). Mr. Pezza also testified concerning quality control procedures used at his Maywood plant to ensure that the material dumped as residential fill is clean fill (R. at 229-230 and 259-262).

Mr. Ed Kozoyed testified on his own behalf at the hearing. Mr. Kozoyed described the conditions of the property at the time he purchased it in October of 1986. He stated that a former owner of the property had allowed the property to be used as a dump site (R. at 267, 292-293 and 307-309) and that both he and his wife witnessed people dumping material on the property, including a load of concrete, in the months prior to their acquisition of the property (R. at 269).

Mr. Kozoyed testified that his interest in acquiring the property was to develop it for residential housing and he detailed efforts that he and Mrs. Kozoyed had made to improve the site (R. at 272 to 283). Included in this work was the collection and removal of debris from the property by M&R Wrecking Company and Crown Disposal (R. at 278 to 281) and the fill activity by Mr. Pezza (R. at 294 to 296). Mr. Kozoyed did acknowledge that someone had fly dumped a load of paneling on the property since he had purchased it (R. at 285) and he said steps had been taken to prevent others from dumping on the property (R. at 286-287). Mr. Kozoyed also testified that he had his property surveyed (R. at 275) and explained how he determined the property

lines and how he supervised the activity on the property to ensure that only his property was involved (R. at 298 to 302).

The member of the public who testified at the hearing was a friend of the Kozoyeds, Mr. Daniel Przybylowski. He testified that he was familiar with the property and the dumping activity on the property. It was his testimony that only clean fill was being dumped on the property and that the dumped material never was spread on the Village of Riverside's property (R. at 361).

DECISION

In a complaint of this type, the burden of proving that a violation of the Act has occurred is clearly on the complainant. In order to prove a violation of Section 21(a), the complainant would need to show both that the respondents caused or allowed open dumping and that the material that was dumped was waste. The Complainant, in this matter, was able to show that there was dumping activity on the Respondent's property. However, the evidence that the material dumped was waste was inconclusive.

The only materials that the testimony indicates were definitely dumped on the property were two truck loads witnessed by Mr. Kendior in 1987 (R. at 54-55). Mr. Kendior stated that this material contained construction material but did not quantify the amount or percentage of construction material in the pile and did not verify the testimony with photographic evidence. In fact, Mr. Kendior did not photograph the site again until April of the following year. His claim that the debris shown in the April 11, 1988 photographs is the same debris he saw dumped in the yard is not persuasively developed. The photographs show no distinguishing characteristics in this debris that would allow Mr. Kendior to recognize it as the debris he saw dumped. Therefore, the Complainant has failed to show that this material he saw dumped was waste and not clean fill.

The remainder of the Complainant's testimony and evidence involving Section 21(a) fail to show that the Respondent caused or allowed the waste to be dumped. The photographs of piles of refuse do not prove that this material was dumped on the site. The Respondents maintain that these materials were gathered from the site and piled prior to disposal as part of the effort to clear the site of the debris that was on the property before they acquired it. The Complainant have failed to carry the burden of showing the origins of the piled debris.

In order to prove a violation of Section 21(b), the Complainant would need to show that the Kozoyeds were responsible for abandoning, dumping or depositing waste on public property. The public property of concern in this complaint is the property adjacent to the Kozoyed's property that belongs to the Village of Riverside. Again, the only waste that the village can

conclusively show was dumped by or for the Kozoyeds is the two truck loads of waste Mr. Kendior saw dumped after July of 1987. Mr. Kendior stated that part of these loads were deposited on village property and removed by the village. This testimony is also not confirmed by photographic evidence. Further, the testimony of Mr. Kendior does not persuade the Board that he had definite knowledge of where the property line between the Kozoyeds' property and the village's property was located or that the landmarks that he was depending on to determine the property line were accurate indicators.

Conversely, Mr. Kozoyed showed that he had had his property surveyed to determine the property line. He further testified that he supervised and inspected all of the dumping, grading and cleanup work on his property to ensure that none of the material was moved to adjoining property. In addition, Mr. Pezza stated that the heavy brush between the properties made it impossible for a truck to access the area from the Kozoyeds' property and dump on the village property. Based on this information, the Board is unpersuaded that the Kozoyeds violated or caused a violation of Section 21(b).

CONCLUSION

The Complainant has failed to persuade the Board that the Respondents, Edwin and Mary Sue Kozoyed, were responsible for a violation of Sections 21(a) and (b) of the Act. Consequently, the Board will not enter an order granting the relief sought by the Complainant and dismisses the complaint with prejudice.

This opinion constitutes the Board finding of fact and conclusion of law in this matter.

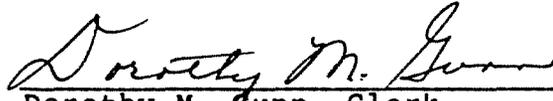
ORDER

The Board hereby denies relief to the Complainant, Village of Riverside, in the above captioned matter and dismisses the complaint with prejudice.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT SO ORDERED.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15th day of December, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board