

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1985

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-23  
 )  
ARNOLD'S SEWER AND SEPTIC )  
SERVICE AND JIMMY T. McDONALD, )  
 )  
Respondents. )

MR. JAMES ARCHIER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR JAMES P. TATOLES, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on a February 24, 1983 Complaint, amended on July 27, 1984, filed by the Illinois Environmental Protection Agency (Agency). The Amended Complaint alleged that the Respondents caused or allowed the open dumping of septic wastes upon a public highway in violation of Sections 21(a), 21(b), and 21(e) of the Illinois Environmental Protection Act (Act).

A hearing was held on January 17, 1985 at which time the parties incorporated a properly signed copy of the Stipulation and Proposal for Settlement into the record.

On February 20, 1985, the Board entered an Order which rejected the proposed settlement agreement. The parties filed a second Stipulation and Proposal for Settlement on September 4, 1985 and a second hearing was held on September 5, 1985.

Respondent Arnold's Sewer and Septic Service (Arnold's), which has been owned and operated by Respondent Jimmy T. McDonald (McDonald) since 1981, is involved in the business of cleaning industrial and residential septic tanks in the Cook County area pursuant to a license issued by the Illinois Department of Public Health. (Stip. 1-2).

The Complaint in the instant case is based on an incident that occurred on June 15, 1982 when a tank truck with Arnold's name on it (admittedly owned by Arnold's and driven by the Respondent's employee, Mr. Thomas Mumford) was spotted by the Arlington Heights police in the process of dumping septic sewage onto a public road (i.e., on a one block length of Nichols Road,

near the intersection of Schaffer Road and Nichols Road in Arlington Heights, Illinois). The driver and operator of this tank truck, Mr. Thomas Mumford (Mumford), was subsequently apprehended by the Arlington Heights police and charged, under a local ordinance, with the offense of dumping waste or refuse on a public road. (Stip. 2). On August 2, 1982, the Circuit Court of Cook County found Mumford guilty of dumping on an open road and fined him \$90.00 with a \$10.00 charge for court costs. (Stip. 2). Shortly after the Circuit Court hearing, Mumford disappeared and has not been seen or heard from since that time. (Stip. 3).

The parties have stipulated that Respondent Jimmy T. McDonald was "unaware, at the time of the occurrence, that Thomas Mumford dumped septic sewage on Nichols Road". (Stip. 3). After the dumping incident occurred on June 15, 1982, the Agency tested samples of the material dumped on Nichols Road by Mumford and ascertained that it was indeed septic waste. (Stip. 3). As Mumford's employer at the time of the incident, Respondent McDonald has admitted liability for causing or allowing Mumford to dump septic wastes onto Nichols Road in violation of Sections 21(a), 21(b), and 21(e) of the Act.

The proposed settlement agreement provides that the Respondents admit the violations alleged in the amended Complaint; agree to continue to desist from further violations of the Act; and agree to pay a stipulated penalty of \$500.00 into the Environmental Protection Trust Fund. (Stip. 4).

The Board notes that the Respondents have admitted violating Sections 21(a), 21(b), and 21(e) of the Act and that the Respondents have agreed to "continue to desist" from further violations of the Act and therefore assumes that item 13 B of the stipulation of September 4, 1985 inadvertently left off the s from the word Respondents as a typographical error, thereby intending that the stipulated penalty is to be paid jointly and severally by the Respondents who have admitted the violations. The phrase "continue to desist" from further violations of the Act may have been intended by the parties to mean "cease and desist" from further violations, but since the intent of the parties is not crystal clear from the context of item 13 A of the stipulation, the Board will construe this ambiguity as requiring the Respondents to cease and desist from further violations. To facilitate the ratification of the Board's interpretation of these apparent typographical errors and ambiguities in the stipulation, item #5 has been placed in the Order for the Respondents to sign and certify.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondents, Arnold's Sewer and Septic Service and Jimmy T. McDonald, have violated Sections 21(a), 21(b), and 21(e) of the Act. The Respondents will be ordered to cease and desist from further violations and to pay the stipulated penalty of \$500.00 to the Environmental Protection Trust Fund.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents, Arnold's Sewer and Septic Service and Jimmy T. McDonald, have violated Sections 21(a), 21(b), and 21(e) of the Illinois Environmental Protection Act.

2. The Respondents shall cease and desist from further violations.

3. Within 30 days of the date of this Order, the Respondents shall jointly and severally, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$500.00 which is to be sent to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

4. The Respondents shall comply with all the terms and conditions of the second Stipulation and Proposal for Settlement filed on September 4, 1985, which is incorporated by reference as if fully set forth herein.

5. Within 45 days of the date of this Order, the Respondents shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Section, 2200 Churchill Road, Springfield, Illinois 62706, a Certification of Acceptance and Agreement to be bound to all terms and conditions set forth in the Order. The 45 day period shall be held in abeyance during any period in which this matter is being appealed. The form of this certification shall be as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, hereby accept(s) and agree(s) to be bound by all of the above terms conditions of the Order of the Illinois Pollution Control Board in PCB 83-23 dated October 10, 1985.

\_\_\_\_\_  
Arnold's Sewer and Septic Service

\_\_\_\_\_  
Mr. Jimmy T. McDonald

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

IT IS 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 10<sup>th</sup> day of October, 1985 by vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board