

ILLINOIS POLLUTION CONTROL BOARD
April 16, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 85-88
)
RICHARD NAUMAN,)
)
Respondent.)

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

MR. ARLIE TRAUGHBER, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board on a two-count Complaint filed on June 25, 1985 by the Illinois Environmental Protection Agency (Agency).

The Agency alleges in Count I of its Complaint that since or before February 9, 1983 until the filing of the complaint Respondent, Richard Nauman (Nauman), has caused or allowed discarded material from one or more sources to be disposed of on property he owns without a permit for such disposal from the Agency. The discarded material was not confined to the smallest practical volume nor was it covered with a layer of earth and, therefore, Nauman has caused or allowed open dumping in violation of section 21(a) of the Environmental Protection Act (Act).

The Agency alleges in Count II of the Complaint that since or before February 9, 1983 until the filing of the complaint Nauman has caused or allowed discarded material which is generated off-site by a person or persons other than Nauman and brought to the site to be disposed of, that the Agency has not granted Nauman a Development or Operating Permit for his site and that by causing or allowing discarded material to be stored or disposed at his site without such permits from the Agency, Nauman has violated Sections 21(d)(1), 21(d)(2) and 21(e) of the Act and 35 Ill. Adm. Code 807.201 and 807.202(a).

Hearing was held on September 3, 1986, at which the parties indicated that the matter had been settled and that a signed Stipulation and Proposal for Settlement would be filed for consideration by the Board. As of February 5, 1987, the Board

had not received the signed settlement agreement and ordered that the parties submit such an agreement by March 16, 1987. In response, the parties filed an unsigned Stipulation and Proposal for Settlement on March 5, 1987. On March 19, 1987, the Board ordered the parties to file a properly signed proposal for settlement by April 2, 1987. On April 8, 1987, the signed Stipulation and Proposal for Settlement was filed. Although filed six days after the final date set by Board Order and more than seven months after the parties indicated that a settlement had been reached, the Stipulation and Proposal for Settlement has been accepted by the Board.

The parties have stipulated to the following set of facts: Nauman owns the site in question which is located approximately one-half mile north of the intersection of Highway D and HH Road southwest of New Hanover, Monroe County, Illinois. In the spring of 1982, Nauman requested that a third party deliver two loads of used tires to his site. The third party subsequently delivered the two loads in addition to other loads of used tires and several bales of tire cords which had not been requested by Nauman. A majority of the tires have remained at the site, and a portion of the tires have been sold by Nauman to other persons. On or before January 31, 1983, nine empty or partially empty drums were dumped in the vicinity of the used tires, and sometime before July 1, 1985, the drums were removed by an unknown party. This dumping was done without Nauman's permission and despite his efforts to prevent such dumping. Finally, during the period of 1982 to 1985, domestic refuse was dumped by unknown persons in the vicinity of the used tires. Again, this dumping was done without Nauman's permission and despite his efforts to prevent such dumping. (Stip. at 2).

The proposed settlement agreement provides that Nauman agrees to remove and properly dispose of the used tires remaining at the site. Such action shall occur within ninety days of the Board's Order approving the settlement agreement. The settlement agreement provides that proper disposal shall include:

1. Disposal at a licensed solid waste disposal or recycling facility;
2. Sale to a third party; and
3. Use by Nauman on equipment used in the operation of his farm.

(Stip. at 3).

In addition, the settlement agreement provides that Nauman may stockpile reusable tires removed from the site in the immediate vicinity of his barn for future use or sale provided that no more than 100 of these tires shall remain in the stockpile after 210

days from the date of the Board's Order approving the settlement agreement and that tires placed in the stockpile shall be arranged in an orderly manner. (Stip. at 3).

Lastly, the settlement agreement provides that Nauman neither admits nor denies the alleged violations and that no penalty, other than the following stipulated penalty shall be required in this case because of the unique circumstances involved. The stipulated penalty provides that in the event that Nauman fails to properly remove the used tires and tire cords from the site within ninety days of the date of the Board's Order approving the settlement agreement, Nauman shall pay a penalty of \$300.00 each month, or portion thereof, said tires or cords remain on site. (Stip. at 3-4).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the criteria set forth in Section 33(c) of the Act and finds the proposed settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board will order Nauman to follow the agreed upon compliance plan as set forth in the following Order.

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. Respondent, Richard Nauman, shall remove and dispose of the used tires remaining at the site in question by July 15, 1987. Proper disposal shall be limited to:
 - a) Disposals at a licensed solid waste disposal or recycling facility;
 - b) Sale to a third party; or
 - c) Use by Respondent on equipment used in the operation of his farm.
2. Respondent may stockpile reuseable tires removed from the site in question. Such stockpiling shall be limited to the area in the immediate vicinity of Respondents farm for future use or sale provided, however, that no more than 100 tires shall remain in the stockpile after November 12, 1987. Tires placed in the stockpile shall be arranged in an orderly manner.

3. In the event that Respondent fails to properly dispose of the used tires and the cords from the site by July 15, 1987, Respondent shall pay a penalty of \$300.00 for each month, or portion thereof, said tires or cords remain on site.
4. Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for settlement filed April 8, 1987, which is attached hereto.

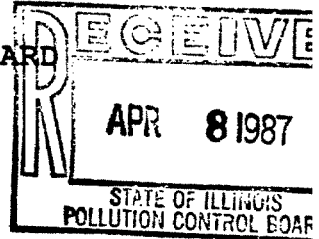
IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16th day of April, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MONROE COUNTY, ILLINOIS



ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

-vs-

RICHARD NAUMAN,

Respondent.

PCB 85-88

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COME complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, and respondent, RICHARD NAUMAN, and do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Statement of Facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further agree that this Statement of Facts is made and agreed upon for the purposes of settlement only and that neither the fact that either party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. This agreement shall be null and void unless the Illinois Pollution Control Board ("Board") approves and disposes of this matter on each and every one of the terms and conditions of settlement set forth herein.

STATEMENT OF FACTS

1. Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency"), is an administrative agency established in the executive branch of the State government by section 4 of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1981, ch.

111 1/2, par. 1001 et seq., (hereinafter "Act"), and charged inter alia, with the duty of enforcing the Act, pursuant to Title 8 thereof.

2. Respondent, RICHARD NAUMAN, owns certain property located approximately one-half mile north of the intersection of Highway D and HH Road southwest of New Hanover, Monroe County, Illinois, and more particularly described as sections 7 and 18 of Township 2 South, Range 10 West (hereinafter "the site"). A portion of this property is located adjacent to where HH Road crosses over Fountain Creek.

3. In the spring of 1982, respondent requested that a third party deliver two loads of used tires to the site. The third party subsequently delivered several other loads of used tires and several bales of tire cords which had not been requested. A majority of the tires have remained at the site to the present. A portion of the tires have been sold by respondent to other persons.

4. On or before January 31, 1983, nine empty or partially empty drums were dumped in the vicinity of the used tires. Sometime before July 1, 1985 the drums were removed by an unknown party. This dumping was done without respondent's permission and despite his efforts to prevent such dumping.

5. During the period of 1982 to 1985 domestic refuse was dumped by unknown persons in the vicinity of the used tires. This dumping was done without respondent's permission and despite his efforts to prevent such dumping.

TERMS OF SETTLEMENT

As a result of settlement discussions conducted, respondent and complainant believe the public interest will be best served by the resolution of this enforcement action under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed in 35 Ill. Adm. Code 103.180, the parties offer this Stipulation, Statement of Facts and Terms of Settlement in lieu of a full evidentiary hearing.

A. Respondent agrees to remove and properly dispose of the used tires remaining at the site within 90 days of the Board's approval of this settlement agreement. Proper disposal shall include:

1. Disposal at a licensed solid waste disposal or recycling facility;
2. Sale to a third party; and
3. Use by respondent on equipment used in the operation of his farm.

Respondent may stockpile reuseable tires (removed from the site) in the immediate vicinity of his barn for future use or sale provided that no more than 100 of these tires shall remain in the stockpile after 210 days from the date of the Board Order approving this settlement. Tires placed in the stockpile shall be arranged in an orderly manner.

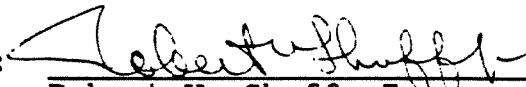
B. In the event that respondent fails to properly remove the used tires and tire cords from the site within the ninety-day period set forth above, respondent shall pay a stipulated penalty of Three Hundred Dollars (\$300.00) for each month, or portion thereof, said tires or cords remain on site.

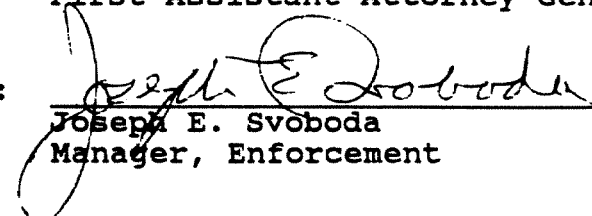
C. Respondent neither admits nor denies the violations as alleged in the complaint.

D. The parties agree that no penalty, other than the stipulated penalties set forth in paragraph B above, shall be required in this case because of the unique circumstances involved.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

NEIL F. HARTIGAN
ATTORNEY GENERAL

BY: 
Robert V. Shuff, Jr.
First Assistant Attorney General

BY: 
Joseph E. Svoboda
Manager, Enforcement

RICHARD NAUMAN

BY: 