

ILLINOIS POLLUTION CONTROL BOARD
March 21, 1984

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 80-49
)
EAST ST. LOUIS SCHOOL DISTRICT NO. 189,)
A. DAVINROY CONTRACTORS, INC., an)
Illinois corporation, CITY OF EAST ST.)
LOUIS, a municipal corporation, and the)
HOUSING AUTHORITY OF THE CITY OF EAST)
ST. LOUIS,)
)
Respondents.)

MR. EDWARD WELCH APPEARED ON BEHALF OF EAST ST. LOUIS SCHOOL DISTRICT NO. 189;

MR. CHARLES STEGMAYER APPEARED ON BEHALF OF A. DAVINROY CONTRACTORS, INC.;

MR. EDWARD NEVILLE APPEARED ON BEHALF OF THE HOUSING AUTHORITY OF EAST ST. LOUIS;

MS. MCGULL-BILLINGSLEY APPEARED ON BEHALF OF THE CITY OF EAST ST. LOUIS;

MS. GWENDOLYN KLINGER, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by. B. Forcade):

This matter comes before the Board upon a May 28, 1982, Second Amended Complaint filed by the Illinois Environmental Protection Agency ("Agency") regarding unpermitted dumping, a violation of (1) Rule 314(c) of Chapter 7: Solid Waste, (2) Ill. Rev. Stat. 1980, sec. 21 (a, b), Ch. 111½, par. 1021 (a, b), and (3) Ill. Rev. Stat. 1979, sec. 21(f), Ch. 111½, par. 1021 (f). Hearings were held on June 26, 1981, December 2, 1982, and March 25, 1983. The following codified rules apply:

35 Ill. Adm. Code	Chapter 7	Summary
807.303(b)	303(b)	Spreading and compacting
807.305(c)	305(c)	Final cover

807.314(c)

314(c)

Fencing, gates, or other
measures to control access
to siteHISTORY

A portion of the property upon which dumping is alleged since November, 1978, is owned by the East St. Louis School District No. 189 ("School District") and an adjoining portion is owned by the East St. Louis Housing Authority ("Housing Authority"). Both the School District and the Housing Authority leased the properties to the City of East St. Louis ("City").

The original three-count complaint in this matter was filed by the Attorney General at the request of the Illinois Environmental Protection Agency on March 24, 1980 against respondent, the School District and A. Davinroy, Contractors, Inc. ("Davinroy"). The complaint charged the Respondents with causing or allowing random, open unpermitted dumping on the School District's vacant property in a residential area of East St. Louis. The City was joined as a Respondent on September 19, 1980 and was charged with the same dumping violations as in the original complaint. On May 28, 1982 the Housing Authority was named as a Respondent with a filing of a second amended complaint. On December 22, 1982, the Agency filed a Motion for Acceptance of Partial Settlement of this case. The proposed settlement agreement has been signed by all respondents except the Housing Authority. The proposed settlement is as follows: (1) Davinroy is charged a \$500 fine,* which the City shall apply to the cost of spreading, compacting and covering refuse on the vacant lots in question; (2) the City is to bring the site into compliance with the Illinois Pollution Control Board's Solid Waste Regulations; (3) the School District is to erect a fence at least eight feet high on or around the border of the property it owns; and (4) the Housing Authority is to erect a fence at least eight feet high on or around the border of the property it owns.

The allegations in this case against the Housing Authority rest solely upon its ownership of land where illegal dumping has occurred. (R. Mar. '83, p. 66). Evidence of land ownership by the Housing Authority is found in testimony by the Executive Director stating that the Housing Authority owns property where there has been illegal dumping (R. Mar. '83, p. 120) and by Barry Hogue, an employee of the Housing Authority when he marked an area on a map to indicate the Housing Authority's land (R. Mar. '83, p. 127). The record contains substantial testimony on the severity of the dumping problem, including two separate occasions when a human body was found (R. 21).

*This amount is contained in an agreement signed by the parties and does not represent a penalty assessed by the Board.

The primary issue in this case is the determination of the landowner's responsibility to prevent illegal dumping on his property. Past decisions by the Illinois Pollution Control Board have found liability on the part of "passive" landowners who were not charged with dumping but allowing their property to be used for dumping.

In EPA v. Dobbeke, PCB No. 72-130 decided August 22, 1972, the Board found that although there was no evidence that the landowner personally dumped on his property, he "allowed" open dumping within the meaning of Section 21(b) of the Act. The Board specifically stated: "He did not build a fence . . . such inaction by the owner of the land implies acquiescence" The Board pointed out that it would take more than "No Dumping" signs to reverse dumping habits of long standing. The Board ordered the landowner to construct a fence to bar access by the public to the dumping site. For additional support see Hindman v. Environmental Protection Agency, 356 N.E.2d 669 (1976), and Environmental Protection Agency v. James McHugh Construction Co., 4 PCB 511 (1972).

The Housing Authority has stated that the property on which dumping occurs is owned by the School District, and repeatedly asserts that dumping has not occurred on Housing Authority property (Resp. Reply Brief pp. 3-7).

There was direct testimony by witnesses and by the Agency that illegal dumping has occurred on the property owned by the Housing Authority. (R. Mar. pp. 35, 113, Dec. 35-36).

Based on the overwhelming testimony the Board finds that dumping has occurred on Housing Authority Property.

The property owned by the School District adjoins the property owned by the Housing Authority and there is no natural barrier or marker of any kind between the two lots (R. Mar. '83 p. 130). This lack of any barrier is critical when one considers the Compliance Plan agreed to in the Stipulation and Proposal for Settlement by the City, the School District, and Davinroy, and requested relief by the Agency against the Housing Authority. As part of the Compliance Plan, the City and the School District agreed to erect an eight-foot fence along the School District's property north of Gross Avenue (Stip. pp. 12-13). However, this fence would end roughly two-thirds of the way down the street at the point where the Housing Authority's property line starts. Obviously, such a fence would be totally ineffective to prevent dumping, since trucks could simply drive in on the Housing Authority's property to dump on either the School District's or Housing Authority's land. A solution to prevent dumping in this entire residential area must be found. It would be useless for the Board to order the terms of the agreed Compliance Plan to be carried out unless it also orders the Housing Authority to erect a fence or barrier along its portion.

Therefore, the Board finds that the property can be brought into compliance only if the Housing Authority constructs a fence in conjunction with the fence to be constructed by the School District, with both parties responsible for effectively prohibiting public access to the property.

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

ORDER

- I. The Board finds the following:
- A. Respondents East St. Louis School District No. 189, and the City of East St. Louis, a municipal corporation, are in violation of (1) 35 Ill. Adm. Code 807.303(b), 807.305(c) and 807.314(c), and (2) Ill. Rev. Stat. 1980, sec. 21 (a, b), ch. 111½, par. 1021 (a, b).
 - B. Respondent A. Davinroy Contractors, Inc., an Illinois corporation, is in violation of Ill. Rev. Stat. 1979, sec. 21(f), ch. 111½, par. 1021(f).
- II. The Board accepts the "Stipulation and Proposal for Settlement" ("Settlement") entered into by the Respondents named in par. I(A) and I(B), and hereby orders them to effectuate the terms of the Settlement, which is incorporated by reference herein as if set forth in full.
- III. The Board finds that the Respondent Housing Authority of the City of East St. Louis is in violation of (1) 35 Ill. Adm. Code 807.303(b), 807.305(c) and 807.314(c) and (2) Ill. Rev. Stat. 1980, sec. 21 (a, b), ch. 111½, par. 1021 (a, b).
- IV. Within 45 days after notification by the Agency pursuant to paragraph K(3), of the Stipulation and Proposal for Settlement, the Housing Authority is ordered to construct a fence at least eight feet high, to be constructed on or around the border of the property owned by the Housing Authority and to be built in conjunction with the fence to be constructed by the School District. The fence will be completed no later than October 1, 1984. The vacant lot will be managed so as to prevent residents and others from dumping refuse upon the site.

IT IS SO ORDERED.

I, Christan L. Moffett, hereby certify that the above Opinion and Order was adopted on the 21st day of March, 1984 by a vote of 6-0.

Christan L. Moffett, Clerk
Christan L. Moffett, Clerk
Illinois Pollution Control Board