

ILLINOIS POLLUTION CONTROL BOARD
August 9, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-60
)
CECIL M. COMMANS, Individually,)
JOANNE COMMANS, Individually,)
FLOYD HAYNES, Individually and d/b/a)
HAYNES CONSTRUCTION & CONCRETE CO.,)
and DU PAGE COUNTY FOREST PRESERVE)
DISTRICT, a municipal corporation,)
)
Respondents.)

ARTHUR B. MUIR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;
A.E. BOTTI AND DOUGLAS DRENK APPEARED ON BEHALF OF RESPONDENT HAYNES;
STEPHEN D. HELM, MADELHOFFER, HENNESSY, DOMMERMUTH AND BRESTAL, APPEARED ON BEHALF OF RESPONDENTS DU PAGE COUNTY FOREST PRESERVE DISTRICT AND PAUL M. MITCHELL.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

A Complaint in this matter was filed on December 24, 1976 and amended on May 10, 1977 and June 30, 1977, on behalf of the Illinois Environmental Protection Agency (Agency) alleging that Respondents Floyd Haynes (Haynes), and Cecil and Joanne Commans (Commans), together with the Du Page County Forest Preserve District (District), violated Sections 12(a) and 3(n) of the Environmental Protection Act (Act) and Rule 203(a) of the Board's Chapter 3: Water Pollution Rules and Regulations. In addition, Respondents Commanses and the District are alleged to have violated Rules 201 and 202 of the Board's Chapter 7: Solid Waste Regulations and Section 21(e) of the Act. Four days of hearings were held in this matter. On August 4, 1977, the Board accepted Complainant's second amended complaint, noting that page 5 was missing. The Board ordered Complainant to submit page 5 which continued part of Count II, and stated that the District's motion to dismiss Count II would be considered at the time that page 5 was received.

The District's motion to dismiss Count II is hereby denied.

The basis of the allegations by the Agency is that Haynes, in his capacity as a construction contractor, deposited pieces of broken concrete and asphalt on the banks of Salt Creek, originally with the permission of the Commanses (Haynes' mother and stepfather), and later with the permission of the District after it had condemned and taken control of the property. Haynes contends that he dumped only black dirt on the property and that it was dumped in an area some distance from Salt Creek. The District alleges that no dumping has occurred since the time it took control of the property and, in any event, that the material dumped on the edge of Salt Creek poses no environmental problem when the polluted nature of Salt Creek itself is considered.

Respondent Joanne Commans did not appear at any of the hearings and Respondent Cecil Commans appeared only during the first two days of hearings.

Pursuant to a call from an employee of Respondent District in September, 1976, an Agency employee inspected an area of the land around Salt Creek. There she saw deposits of concrete and asphalt (R.28). This material was situated approximately 100 feet from the home of the Commanses and is shown in the photographs contained in Exhibit 3. The Agency employee, Ms. Staton, further testified that she contacted two persons at the residence who identified themselves as Mr. and Mrs. Commans. Subsequently, Ms. Staton made phone calls in an attempt to contact Floyd Haynes. She succeeded in talking with a man who identified himself as Mr. Haynes, and who stated that he had indeed dumped asphalt and concrete on the Commanses' property, but that he no longer intended to do so. A construction company supervisor testified that he saw Floyd Haynes dumping a load of concrete near the bank of Salt Creek and that Haynes had indicated to him that he had been dumping material in that area for about a year (R.243). The supervisor, Reinhardt, further stated that he had seen Haynes dumping on a site at a later date, and had seen Haynes' truck at the site a number of other times. A surveyor, Robert Hamilton, testified that he had seen a dump truck on the site a number of times, that he had seen the truck driver dump material, and that Floyd Haynes was the driver (R.315). Hamilton testified further that enough material had been dumped on the east bank of Salt Creek to narrow the creek channel and that the quantity of material on the bank was approximately 9,000 cubic feet.

Haynes testified that he had dumped the material on the Commanses' property, but that it had consisted wholly of black dirt. He also testified that many of his concrete contracting jobs included the removal and disposal of asphalt and concrete, but he maintained that all this material had been dumped at licensed dumps in the area, although he could not remember when and where such dumping occurred. In addition, Haynes testified that Exhibit 1 is a picture of his truck parked on

the Commanses' property, and that the Commanses are his mother and stepfather (R.813).

After careful consideration of the evidence in the record, the Board concludes that Haynes did deposit broken concrete and asphalt on the Commanses' property during the years 1975 and 1976, with the Commanses' permission. The Board finds that Haynes and the Commanses violated Sections 3(n), 12(a) and 21(c) of the Act and Rules 201, 202 and 203(a) of the Board's Water Pollution Control Regulations.

The record is much less clear with respect to dumping at the site subsequent to September 16, 1976, the time at which the District took control of the property. None of the Agency witnesses testified concerning dumping at the site occurring subsequent to the September 16, 1976 date, and Haynes testified that he had not dumped anything on the site since September 15, 1976, nor had he received any permission from the District to do so (R.917-8).

The Board finds that the District did not allow dumping at the site and is therefore not in violation of Section 12(a) and 3(n) of the Act as the Agency alleges. In addition, the Board finds that the District neither owned nor operated a solid waste management site and is therefore not in violation of Rules 201 and 202 of the Regulations and Section 21(e) of the Act.

However, under the General Standards Regulation, Rule 203(a), all waters of the State must meet standards designed to preserve the State's water for various uses, and to enhance the aesthetic quality of the State's aquatic environment. Included as one standard is "freedom from unnatural sludge or bottom deposits". Notwithstanding the arguments concerning whether the concrete and asphalt deposits in Salt Creek constitute a potentially harmful situation with regard to human, animal, plant and aquatic life, there can be no question that they constitute unnatural bottom deposits that do not enhance the aesthetic quality of the State's aquatic environment. The Board must therefore find the District in technical violation of Rule 203(a) in that the property under its ownership and control contains the aforementioned deposits. The Board is cognizant of the District's intent to improve the environment by the purchase of the Commanses' property and acknowledges the environmental good done by the District in the past. On the other hand, property owners must recognize their duty to conform to State laws and regulations, and must realize that when one purchases a piece of property one takes the responsibility for any problem that may be associated with that property at the time of purchase.

The Board finds that both Haynes and the Commanses bear responsibility for the dumping situation that occurred, Haynes

by the actual dumping of the material, and Commanses by their consent. A penalty is necessary in this case to help further the intent of the Act by discouraging future dumping situations by the Respondents and by others. Although it is clear that there is no gross damage to the environment in this case, dumping of this type can lead to such dumping by others, which in turn would present a real danger to even so polluted a stream as Salt Creek. The Board therefore assesses a penalty of \$500 against Resondent Haynes, and a penalty of \$300 against Respondents Commanses for the violations noted herein. Considering the technical nature of the District's violation, the Board will not assess a penalty for the violation of 203(a).

In assessing the problem of who is responsible for correcting the situation as it now exists, the Board concludes that the most equitable resolution is to hold Haynes, the Commanses and the District all jointly and severally liable for the removal and/or cover of the material dumped on the Commanses' property. Considering the long-term plans of the District for the property, the Board will allow an amount of time to accomplish correction of the problem. However, the District must, in addition, take whatever measures are necessary to insure that no further dumping occurs on the property prior to correction of the existing problem.

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

ORDER

It is the Order of the Pollution Control Board that:

- 1) Cecil M. Commans, Joanne Commans, and Floyd Haynes are found to have violated Sections 3(n), 12(a) and 21(e) of the Illinois Environmental Protection Act, and Rules 201 and 202 of the Board's Water Pollution Control Regulations in that they deposited or allowed the deposit of refuse adjacent to and/or in Salt Creek.
- 2) Cecil M. Commans, Joanne Commans, Floyd Haynes, and the Du Page County Forest Preserve District are found to have violated Rule 203(a) of the Board's Water Pollution Control Regulations.
- 3) The Complaint alleging violation of Sections 3(n) and 12(a) and 21(e) of the Environmental Protection Act and Rules 201 and 202 of the Board's Water Pollution Control Regulations by the Du Page County Forest Preserve District is hereby dismissed.
- 4) Cecil M. Commans and Joanne Commans shall pay a penalty of \$300 for the violations found in paragraphs 1 and 2,

supra, said penalty payable within 30 days of the date of this Order by certified check or money order to the State of Illinois and sent to the Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

- 5) Floyd Haynes shall pay a penalty of \$500 for the violations found in paragraphs 1 and 2, supra, said penalty payable within 30 days of the date of this Order by certified check or money order to the State of Illinois at the address given in paragraph 4 above.
- 6) Cecil M. Commans, Joanne Commans, Floyd Haynes and the Du Page County Forest Preserve District shall be jointly and severally liable for the removal and/or cover of the material dumped on the Commanses' property, such work to be completed within eighteen months of the date of this Order.
- 7) The Du Page County Forest Preserve District shall take whatever measures are necessary to insure that no further dumping occurs on the property prior to the execution of paragraph 6, supra.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9th day of August, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board