

ILLINOIS POLLUTION CONTROL BOARD
July 26, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-16
)
 WILLIAM MILLAS, CITY OF CENTREVILLE,)
 and SOUTHERN ILLINOIS BLACK TRUCKERS,)
 INC.,)
)
 Respondents.)

Mr. Reed Neuman, Assistant Attorney General, appeared on behalf of the Complainant;
Mr. John Sprague, Sprague, Sprague & Ysura, appeared on behalf of Respondents William Millas and City of Centreville.

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

On January 23, 1979, the Environmental Protection Agency filed a Complaint against Respondents, William Millas, the City of Centreville (City) and Southern Illinois Black Truckers, Inc. (Southern). The Complaint alleged that the Respondents Millas and the City had caused or allowed the construction and installation of a solid waste disposal site from January 19, 1977, until the date of this Complaint without the necessary development and operating permits in violation of Section 21(e) of the Environmental Protection Act and Rules 201 and 202(a) of Chapter 7: Solid Waste Regulations. The Respondents Millas and the City were also charged with violations of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7 for daily cover violations from January 19, 1977, for final cover violations from March 30, 1977, and for open burning violations from February 16, 1977, until the date of the Complaint. The Complaint further alleged that Respondent Southern Illinois Black Truckers, Inc. caused or allowed the operation of a solid waste disposal site from July 1, 1978, until the date of filing of the Complaint in violation of Section 21(e) of the Act and Rule 202(a) of Chapter 7. This Respondent was also charged with failing to provide adequate daily and final cover and for causing or allowing open burning all since July 1, 1978, until the date of this Complaint, in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7.

A hearing was held on May 11, 1979, in Belleville, Illinois where the Respondents William Millas and the City of Centreville were present and duly represented by the same counsel. Southern Illinois Black Truckers, Inc. did not appear at the hearing, nor did this Respondent file any pleadings in this matter.

At the beginning of the hearing, the Agency and the Respondents Millas and the City submitted Joint Group Exhibits 1 through 5, which included the Agency's Request for Admissions and Genuineness of Documents and the Answer(s) from William Millas (J. Grp. Exh. #1) and the City (J. Grp. Exh. #2). Complainant's Exhibit #6, the Request for Admissions submitted to Southern Illinois Black Truckers, Inc. was also admitted into evidence without response.

The record indicates that the Agency received responses from the Respondents William Millas and the City within the 20 days of service. Upon review of the Respondents' Answers, however, the Agency filed a motion with the Hearing Officer claiming that the responses of Respondent Millas to Request for Admissions 5, 6, 7, 8 and 11 were inappropriate and unresponsive and that the Respondent should be compelled to answer them properly. Accordingly, the Hearing Officer ordered that Millas furnish proper answers on or before March 30, 1979. Having received no response to the order, the Hearing Officer submitted an order on April 12, 1979, that Complainant's Request for Admissions 5, 6, 7, 8 and 11 be deemed admitted. Since the original responses of the Respondent Millas did not comply with the requirement of Procedural Rule 314(c), the Board will affirm the Hearing Officer's order on this matter. (See J. Grp. Exh. #1).

While the Respondents Millas and the City submitted timely responses to the Agency's Request for Admissions, the Respondent Southern Illinois Black Truckers, Inc. failed to submit an Answer within the 20-day procedural rule requirement, nor on any occasion prior to the hearing. Since the record indicates service of due notice upon Southern's registered agent, each matter of fact and the genuineness of each document will be deemed admitted for the purposes of this enforcement action.

The subject of this enforcement action concerns particular property owned by the Respondent William Millas which is located in the Southwest Quarter of the Southeast Quarter of Section 4 in Township 1 North, Range 9 West of the Third Principal Meridian in St. Clair County in Centreville, Illinois. On January 19, 1977, the Respondent William Millas entered into a memorandum of agreement with the City of Centreville to allow the latter to dispose of construction debris accumulated from the Centreville Demolition Program on Millas' property for two years for the sum of \$2,000.00. The agreement provided that the City would place daily cover and close with final cover upon termination of the agreement. Section 5 of the agreement stipulated that the City was responsible for complying with the Environmental Protection Agency rules and regulations (sic) with regard to "combustability, exposure or any other conditions or regulations." Section 6 of the agreement provided that the City would indemnify Millas for penalties imposed as a result of the City's activities at the site. (R. 40; J. Grp. Exh. #5).

During the period extending from February 16, 1977, until the date of the hearing, May 11, 1979, the Agency reported approximately eleven inspections of the Centreville site. On February 16, 1977, Kenneth Mensing, regional manager for the Agency, conducted the initial investigation of the Centreville site. Inspection revealed that demolition debris had been deposited over approximately one acre of the site without spreading or compacting or cover. Evidence in the record also indicated that certain debris had been burned at the site. (J. Grp. Exh. #3, 2-16-77).

The Centreville site was also inspected by T. G. Ayers of the Agency on March 30, 1977, who reported that the site was in the same general condition as indicated in the February 16, 1977 report. On June 7, 1977, the Agency issued a Notice of Violation against the Respondents Millas and the City. In return, the Respondents stipulated that the Centreville site would be leveled and cover would be applied within 21 days. On July 5, 1977, Mr. Mensing returned to the site to discover that the debris had been spread and leveled at the Centreville site except that final cover had not been applied over the one acre site to specification. (J. Grp. Exh. #3, 3-30-77, 7-5-77; J. Grp. Exh. #4).

Early 1978 inspections by David Wieties, a field inspector of the Agency, revealed no new dumping. However on July 7, 1978, Mr. Wieties discovered that the Centreville site had been reopened and that 7 to 10 truckloads of demolition debris had been deposited at the site without benefit of spreading, compacting or provision for cover. On July 20, 1978, Mr. Wieties returned to the site and observed a dump truck with labeling "Southern Illinois Black Truckers" on the side panel and an end-loader for purposes of spreading and compacting the refuse. Three men present at the site stated that they worked for Southern and were using the Centreville site because they could not afford landfill charges or the cost of obtaining an Agency permit. (R. 25-26; J. Grp. Exh. #3, 3-13-78, 7-5-78, 7-20-78).

Mr. Wieties returned to the Centreville site on July 25, 1978, and discovered 12 to 15 piles of newly-deposited demolition debris at the site. Stockpiles of cover material were also present at the site, but most of the demolition debris was left uncompacted and uncovered. (J. Grp. Exh. #3, 7-25-78).

On August 4, 1978, Mr. Mensing visited the site on inspection to discover that the two entrances of the Centreville site had been barricaded. Mr. Mensing observed that the 12 to 15 piles of demolition debris discovered on July 25, 1978, had been spread and leveled. On further inspection, Mr. Mensing noticed that certain material on the south edge of the site had been burned. Furthermore, no cover had been applied to the demolition debris, nor was there any evidence of any cover at the site. (J. Grp. Exh. #3, 8-4-78).

During subsequent inspections of the Centreville site on August 22, 1978, February 15, 1979, and May 11, 1979, Agency inspectors observed certain improvements in the site. On August 22, 1978, an inspection by Perry Mann, an environmental geologist for the Agency, indicated that demolition debris had been spread and particular areas had received cover material. However, Mr. Mann observed evidence of burning along the southwest side of the site. While inspecting the site, Mr. Mann talked with Andrew Millas, the son of the Respondent Millas, who indicated that his family was not happy with the operation of the site. Andrew Millas stated that he had placed the barricades at the two entrances to the site, but this did not prevent the deposits of new demolition debris at the site. (R. 39-40; J. Grp. Exh. #3, 8-22-78).

On February 15, 1979, the Agency inspection report disclosed no additional demolition material at the Centreville site. Exposed demolition material was still evident at the site, but cover material had been stockpiled at the site. However, on May 11, 1979, the date of the hearing, Mr. Wieties returned to the Centreville site to find that final cover had been adequately applied to the site. At the hearing, the Respondents Millas and the City stipulated that the site would be permanently closed. (R. 9; J. Grp. Exh. #3).

Prior to the issuance of this Complaint, the record shows that the Respondents received numerous letters from the Agency's regional office in Collinsville informing the three Respondents of the results of the investigations, the need for developmental and operating permits and warnings of possible consequences if disposal of demolition debris continued at the site. However, with the exception of the Notice of Violation, the letters prompted no response and the warnings went unheeded. (See J. Grp. Exh. #1, A-G; J. Grp. Exh. #3, A-F; J. Grp. Exh. #4).

In view of the evidence and the admissions in the record, the Board finds Respondents William Millas and the City of Centreville in violation of Section 21(e) of the Act and Rules 201 and 202(a) of Chapter 7, for causing or allowing the installation of a solid waste disposal site from January 19, 1977, until the date of this Complaint, without the necessary development and operating permits. The evidence and the admissions are also sufficient for finding Respondents William Millas and the City of Centreville in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7, for daily cover violations from February 16, 1977, through June 7, 1977, and from July 7, 1978, until the date of this Complaint, and final cover violations from March 30, 1977, until the date of this Complaint, and for causing or allowing open burning violations on or about February 16, 1977, March 30, 1977, August 4, 1978 and August 22, 1978.

With regard to the Respondent Southern Illinois Black Truckers, Inc., the Board finds that the admissions in Complainant's Exhibit #6 are sufficient for finding this Respondent in violation of the allegations in the Complaint as charged. Respondent Southern Illinois Black Truckers, Inc. is hereby found to have caused or allowed the operation of a solid waste management site from July 20, 1978, until the date of this Complaint in violation of Section 21(e) of the Act and Rule 202(a) of Chapter 7. The Respondent Southern has also failed to provide adequate daily and final cover from July 20, 1978, until the date of this Complaint and has caused or allowed open burning on or about August 4, 1978, and August 22, 1978, in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7.

Before considering the penalty provisions of the Act, the Board will review factors in mitigation for each Respondent. In defense of the charges in the Complaint, Respondent William Millas claimed that the lease with the City, which imposed a duty upon the City to comply with the disposal rules and regulations of the State, effectively relieved the Respondent lessor of any responsibility under the provisions of the Act or the Board's rules and regulations. The Board disagrees. In prior decisions, the Board has held that a lessor of property is responsible for causing or allowing violations of the Act. EPA v. James McHugh, PCB 71-291, 4 PCB 511, 513, 514 (May 17, 1972); People v. Lincoln Stone Quarry, Inc., PCB 75-368, 19 PCB 261 (November 6, 1975). In both of those cases, the Board has stated:

"The term "allow" imposes affirmative duties that may in some cases go beyond those of the common law to exercise care to prevent others from causing pollution [A] landfill owner must exercise some control over those operating the facility under lease [W]e do not believe that the policy of the statute can be evaded by contract. . . .

In Bath, Inc. v. PCB, (1973) 10 Ill. App. 3d 507, 294 N.E. 2d 788, the Appellate Court of Illinois, Fourth District upheld the Board's finding that the lessor and lessee of a landfill were in violation of the State's sanitary landfill rules and regulations. Therefore, the Board affirms its finding above that the Respondent Millas was in violation of his statutory duty under the Act and under the Board's Chapter 7: Solid Waste Regulations with regard to the development, operation or maintenance of the Centreville site. The Board will take notice of the Respondent's efforts to control the dumping at the Centreville site after entering into the contractual agreement with the City. Our concern in this matter, however, focuses on this Respondent's duties prior to the use of the Centreville site to ensure that the site would be properly prepared for accepting demolition waste in a manner consistent with the Act and Board regulations.

Other factors in mitigation in the record include the poor financial condition of the City of Centreville, which the City claims should be considered before any penalty is assessed. With regard to Southern Illinois Black Truckers, Inc., Respondent's default prevents the Board from weighing any purported mitigating factors on its behalf.

Section 33(c) of the Act requires the Board in making its determination to consider and evaluate the degree of injury to the public, the social and economic value of the pollution source, the suitability of the pollution source to its location and the technical practicability and economic reasonableness of reducing or eliminating the pollution violation. In this case, the Board finds the following:

1. The character and degree of injury resulting from these violations at the Centreville site is measured in terms of the need for a viable permit system for all solid waste disposal sites to protect the public from injury or interference with health and property. It is well established that the permit system is the cornerstone of the Act and, whenever necessary, the Board must use its penalty provisions as an economic incentive for compliance with the permit requirements. EPA v. Time Chemical, Inc., PCB 75-291, 19 PCB 386, 387 (December 4, 1975); EPA v. Chenoa Stone Co., PCB 75-152, 19 PCB 659, 660 (January 14, 1976); EPA v. Scope Products, Inc., et al, PCB 75-290, 20 PCB 229, 232 (March 11, 1976).

2. The social and economic value of the Centreville site as a receiving site for demolition waste is not questioned here. While the Board recognizes the need for a disposal site for urban renewal and other demolition programs, this does not excuse the continuous violations of the State's solid waste requirements which are designed to protect the individuals in the vicinity of the site and the public at large.

3. While the Board cannot review the geological and environmental suitability of the Centreville site for a sanitary landfill in absence of Agency permit review or other evidence in the record, we find that operation of the site in violation of the permit requirements and at variance with solid waste management practices seriously diminishes the social and economic value of the site.

4. The testimony in the record indicates that compliance with the provisions of the Act and the Board regulations was technically practical and economically reasonable. However, the record also reveals that these requirements were willfully disregarded in the face of numerous letters of warning and notice of violations. In St. Clair County, demolition debris may be properly disposed of at the S.C.A.-Milam Landfill in East St. Louis for \$20 per load of approximately 15 cubic yards. (R. 43).

The Board will assess a \$100.00 penalty against the Respondent William Millas for violations found herein to aid in the enforcement of the Act.

While some mitigation is justified due to Respondent City of Centreville's financial difficulties, such conditions will not justify this Respondent's failure to comply with the laws of this State regarding solid waste disposal. Under these circumstances, the Respondent City will be assessed \$200.00 as a minimum necessary to aid in the enforcement of the Act.

The Board further finds that a penalty of \$500.00 is necessary to induce the Respondent Southern Illinois Black Truckers, Inc. to comply with the requirements of the Act and Board regulations.

Respondents William Millas, City of Centreville and Southern Illinois Black Truckers, Inc. shall cease and desist from further violations of the Act and Board regulations as found herein.

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

ORDER

1. Respondent, William Millas, is hereby found in violation of Section 21(e) of the Environmental Protection Act and Rules 201 and 202(a) of Chapter 7: Solid Waste Regulations, for causing or allowing the installation of a solid waste disposal site from January 19, 1977 until January 23, 1979. The Board further finds Respondent, William Millas, in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7 for failing to provide adequate daily cover from February 16, 1977, through June 7, 1977 and from July 7, 1978, until January 23, 1979, and final cover from March 30, 1977 until January 23, 1979, and for causing or allowing open burning on or about February 16, 1977, March 30, 1977, August 4, 1978 and August 22, 1978.

2. Respondent, City of Centreville, is hereby found in violation of Section 21(e) of the Environmental Protection Act and Rules 201 and 202(a) of Chapter 7: Solid Waste Regulations, for causing or allowing the installation of a solid waste disposal site from January 16, 1977 until January 23, 1979. The Board further finds the Respondent, City of Centreville, in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7, for failing to provide adequate daily cover from February 16, 1977 through June 7, 1977, and from July 7, 1978 until January 23, 1979, and final cover from March 30, 1977, until January 23, 1979, and for causing or

allowing open burning on or about February 16, 1977, March 30, 1977, August 4, 1978, and August 22, 1978.

3. Respondent, Southern Illinois Black Truckers, Inc., is hereby found to have caused or allowed the operation of a solid waste disposal site from July 20, 1978 until January 23, 1979, in violation of Section 21(e) of the Environmental Protection Act and Rule 202(a) of Chapter 7: Solid Waste Regulations. The Board further finds the Respondent, Southern Illinois Black Truckers, Inc., in violation of Section 21(b) of the Act and Rules 301, 305(a), 305(c) and 311 of Chapter 7, for failing to provide adequate daily and final cover from July 20, 1978, until January 23, 1979, and for causing or allowing open burning on or about August 4, 1978, and August 22, 1978.

4. Respondent, William Millas, shall pay a penalty of \$100.00 for the aforementioned violations within 35 days of this Order. Payment shall be by certified check or money order payable to:

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

5. Respondent, City of Centreville, shall pay a penalty of \$200.00 for the aforementioned violations within 35 days of this Order. Payment shall be by certified check or money order payable to:

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

6. Respondent, Southern Illinois Black Truckers, Inc., shall pay a penalty of \$500.00 within 35 days of this Order. Payment shall be by certified check or money order payable to:

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

7. Respondents, William Millas, City of Centreville, and Southern Illinois Black Truckers, Inc., shall cease and

desist from violations of the Act and Board regulations as found herein from the date of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26th day of July, 1979, by a vote of 4-0.

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