

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 1977

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-447  
 )  
 )  
 EUGENE BERNARDI, JR., EMIL BERNARDI, )  
 KENNETH BERNARDI, and KENNETH TRUMP, )  
 doing business as OGLESBY )  
 CONSTRUCTION COMPANY, )  
 )  
 Respondents. )

MS. MARY C. SCHLOTT, ASSISTANT ATTORNEY GENERAL, appeared on behalf  
of Complainant;  
MR. DAVID RIES, appeared on behalf of Respondents Bernardi.

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

This matter comes before the Board on an Amended Complaint filed on January 9, 1976 by the Environmental Protection Agency. The Amended Complaint consists of five Counts and alleges numerous violations of the Act and the Board's Solid Waste Regulations at a site owned by the Bernardis near Piety Hill, LaSalle County, Illinois. A hearing was held on February 19, 1976 at which Respondent Trump did not appear. On July 8, 1976 the Board issued an Interim Order which granted the Agency leave to file a Second Amended Complaint, which dropped the allegations as against Respondent Emil Bernardi and deleted Count VI. The Interim Order further required the submission of affidavits from each party as to the estimated costs of covering or removing the refuse which is on the subject site. Such affidavits having been supplied, the Board now will be better able to construct a remedy.

On January 27, 1976 the Agency personally served upon Respondent Trump the Amended Complaint and the Request for Admission of Facts filed with the Board on January 28, 1976. Respondent Trump failed to appear at the February 19 hearing. Respondent Trump failed to respond to the Request for Admissions.

Pursuant to Rule 320 of the Board's Procedural Rules the Board hereby finds Respondent Trump in default. Pursuant to Procedural Rule 314(c) the Board finds Respondent Trump to have admitted each fact for which admission was requested. The following has thus been admitted:

- A. Respondent Trump or his agents caused or allowed the dumping of demolition material and other refuse on the site in question on a number of occasions during the year of 1974.
- B. The Agency informed Respondent Trump of the illegality of these actions (see Exhibit LL).
- C. Respondent Trump promised on two separate occasions to cover or to remove the refuse.
- D. The accuracy of all inspection reports and photographs except for the December 12, 1975 inspection.
- E. The remaining requests for admission which pertain to the conduct of the Bernardis.
- F. That Respondent Trump cease this dumping prior to October 24, 1974.

The effects of the default and admissions will be discussed as to each of the five counts in the Second Amended Complaint.

Count I of the five Count Complaint alleges that Respondent Trump caused, and Respondents Bernardi allowed, the operation of a solid waste management site in violation of the permit requirements of Rule 202(b)(1) of the Board's Solid Waste Regulations and Section 21(e) of the Act, and Section 21(b) of the Act. Counts II and III allege failure to provide final cover and daily cover in violation of Rules 305(c) and Section 21(b) of the Act, and Rule 305(a), respectively. Count II alleges open dumping in violation of Section 21(b) of the Act. Count V alleges that Respondent Trump's conduct further violated Section 21(f) of the Act.

Each of the four Counts against the Bernardis are based upon the same course of non-conduct. There is no factual issue in the record concerning whether the dumping actually did occur or whether proper cover was provided or whether a permit was obtained.

The fact that the dumping did occur on the Bernardi site is sufficient to find the alleged violations as a property owner must be presumed to have been in control of his own land. This fact is especially true because no formal action was taken to force Respondent Trump to cease dumping or to remove the refuse, and the informal contacts were less than vigorous. However, the Bernardis apparent lack of actual knowledge of the dumping until after its completion (R. 28, 48, 49) presents substantial mitigation as will be discussed below.

No evidence has been introduced to contradict the Agency's 35 evidentiary exhibits which clearly show the truth of each of the Complaint's allegations.

However, the allegation in Count I of a Section 21(e) violation constituting a violation of Section 21(b) of the Act will be dismissed. That proposed interpretation has been repeatedly rejected by this Board.

The violations alleged are not contested in the record and are deemed admitted by Respondent Trump. The Board finds that Respondent Trump caused, and the Respondents Bernardi allowed, the operation of a solid waste management site without the required permit. The Board finds that Respondent Trump caused, and the Respondent's Bernardi allowed, the operation of a solid waste management site in violation of the requirement of daily cover and final cover. The Board finds that the violations of the daily cover and final cover requirements likewise constitute open dumping of refuse. The Board finds that Respondent Trump's aforesaid conduct of depositing waste at a site in violation of the permit and cover requirements also constitutes a violation of Section 21(f) of the Act.

#### REMEDY

The Bernardis never gave permission to anyone to dump on their property (R. 29, 42, 48). From the evidence introduced at the hearing, and given Trump's default and admissions, the Board finds that Respondent Trump dumped refuse on the Bernardis land without either their permission or knowledge (R. 28, 43, 48).

It is apparent from the record that no attempt was made to properly spread, compact and cover the refuse dumped (see Agency reports, Exhibits A-LL). We are dealing with simply an open dump, which has a highly negative social and economic value.

Open dumps present a health and safety hazard and destroy the value of the property upon which they are located. The dumping on another's land without permission has an especially odious nature. There is no doubt that the proper operation of a solid waste management site is economically reasonable and technologically feasible. To appropriate the use of another's land for such an unnecessary, and socially and economically negative purpose is unjustifiable. Open dumping is unsuitable to this particular site as it is to any area.

On August 6, 1976 the Agency filed the affidavit of Mr. David L. Lambert upon his personal July 20, 1976 inspection of the subject site. Mr. Lambert estimated the total removal cost at \$25,940. On August 20, 1976 Mr. Thomas M. Shields, attorney for Respondents Eugene (Jr.) and Kenneth Bernardi filed an affidavit based upon his inspection of August 11, 1976. Mr. Shields stated that the complained of refuse had been removed. As the Agency has not responded to this observation the Board will assume that it is accurate.

The Board finds that it would serve no useful purpose to impose a substantial penalty upon the Bernardis for their violations. The Board finds a penalty of \$100.00 to be appropriate and will further order that the above-stated violations be ceased and desisted from. The Bernardis will also be required to take such actions as are necessary to prevent any future promiscuous dumping.

The Board does find a substantial penalty appropriate for Respondent Trump for the reasons shown above as aggravating factors regarding Section 33(c) of the Act. The Board finds \$1,000.00 to be an appropriate penalty, especially given Mr. Trump's promises to remove the debris (Admission "C", above).

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

Mr. Young concurs except as to penalty.

#### ORDER

1. Respondents Eugene Bernardi, Jr. and Kenneth Bernardi are hereby found to have violated Rules 202(b)(1), 305(c), and 305(a) of the Board's Solid Waste Regulations and Sections 21(e) and 21(b) of the Act.

2. As a penalty for the above-found violations Respondents Eugene Bernardi, Jr. and Kenneth Bernardi shall pay to the

State of Illinois the sum of \$100.00, payment to be made by certified check or money order within 35 days of the date of this Order to:

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

3. Respondent Kenneth Trump is hereby found to have violated Rules 202(b)(1), 305(c), and 305(a) of the Board's Solid Waste Regulations and Sections 21(c), 21(b), and 21(f) of the Act.

4. Respondent Kenneth Trump shall pay as a penalty for the above-found violations the sum of \$1,000.00 to the State of Illinois. Payment shall be made by certified check or money order within 35 days of the date of this Order to:

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

5. Respondents Eugene Bernardi, Jr., Kenneth Bernardi, and Kenneth Trump shall cease the above-found violations and desist from such violations in the future.

6. Respondents Eugene Bernardi, Jr. and Kenneth Bernardi shall take such actions as are necessary to prevent future promiscuous dumping on the subject site.

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 6<sup>th</sup> day of January, 1977 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board