

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 79-262
)
MIKE MANEY AND GENE HEIL, d/b/a)
METROPOLITAN WASTE COMPANY, a)
PARTNERSHIP; and LUCILLE E. KRUSE,)
HAROLD THOMAS and GENE THOMAS,)
)
Respondents.)

MR. REED W. NEUMAN AND MS. CHRISTINE G. ZEMAN, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. CHARLES E. HAMILTON APPEARED ON BEHALF OF THE RESPONDENT MIKE MANEY; MR. DALE M. FUNK APPEARED ON BEHALF OF THE RESPONDENT GENE HEIL; AND MR. JIM D. KEEHNER APPEARED ON BEHALF OF THE RESPONDENTS LUCILLE KRUSE, HAROLD THOMAS, AND GENE THOMAS.

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

This matter comes before the Board upon an amended complaint filed February 27, 1980, by the Illinois Environmental Protection Agency (Agency). The amended complaint alleges that Respondents, Mike Maney (Maney) and Gene Heil (Heil), are general partners doing business as Metropolitan Waste Company (Metropolitan) and have operated a sanitary landfill and solid waste disposal site (said site) in Belleville, St. Clair County, Illinois. At all times relevant to this complaint Metropolitan leased the property constituting said site from the owners, Respondents Lucille E. Kruse, Harold Thomas, and Gene Thomas (Kruse, H. Thomas, and G. Thomas). Operational permits were issued on March 10, 1978, to all Respondents, Maney and Heil (as operators of Metropolitan) and Kruse, H. Thomas, and G. Thomas (as landowners), authorizing them to handle general municipal solid waste on said site. Supplemental permits were issued to Respondent Maney, on April 25, 1978, permitting Metropolitan to accept heavy metal sludge at said site until the expiration date of April 25, 1979.

Complainant alleges that on various dates between June 6, 1978, and February 22, 1980, Respondents Maney and Heil violated various rules of Part III of the Illinois Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste (Solid

Waste Rules) namely: Rules 301,302,304,305(a) and 310, and Section 21(b) of the Illinois Environmental Protection Agency Act (Act). The violations are alleged to be a result of: (1) a failure to provide a 6-inch daily cover, (2) accepting sludges after the supplemental permits had expired, (3) placing sludge outside of prepared trenches, and (4) failing to make available sufficient equipment.

Complainant also alleges that Respondents Kruse, H. Thomas and G. Thomas have violated Rule 301 of the Solid Waste Rules and Section 21(b) of the Act by allowing the above conduct of Maney and Heil.

The hearing was held on May 29, 1980. All Respondents were present either in person or through counsel. David Wietes, an EPA inspector, and Kenneth Mensing, an EPA regional Manager, testified for the Agency, as did the Respondent, Morris Michael Maney as an adverse witness. Mr. Maney was the only defense witness. Mr. Keehner, representing Kruse, H. Thomas and G. Thomas, withdrew after participating in the examination of Mr. Wietes and stipulating to exhibits, and did not participate thereafter.

David Wietes testified to a lack of daily cover at said site on June 6, 1978, (R.36). This testimony is bolstered by Complainant's Exhibit #6. He further testified to a lack of daily cover on a second inspection July 21, 1978 (R.40) shown in Complainant's Exhibits #7,A&B. Much of the remainder of the evidence of violations comes from Complainant's Group Exhibit #12 which was admitted into evidence in lieu of the more detailed testimony of the inspectors. This was stipulated to by the attorneys for Maney and Heil (R.74). This group of exhibits consists of a number of inspection reports of said site and can be summarized as follows:

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| June 6, 1978: | Daily cover not provided on previous operation day. Inspector questions operating procedure. |
| July 21, 1978 and September 22, 1978 and Oct. 6, 1978: | Daily cover not provided on previously deposited refuse, nor on previous operating day. Problem of insufficient general refuse. |
| March 22, 1979: | Same problems as 3 previous inspection dates. Also, sludge being dumped outside of trenches and ACTD-25 dozer inoperable. No general refuse being taken in. |
| April 26, 1979: | Same as March 22, 1979, except that a track type backhoe (rented the last 2 weeks) was operating, but that was indicated as insufficient operable equipment. |
| July 9, 1979: | Site condition the same as April 26, 1979. Rick Maney indicated that 2 loads of Pfizer's sludge had come in that day. Another load arrived during inspection. |

- August 8, 1979: Site deteriorating. Still accepting Pfizer sludge without permit and without manifests. Sludge being dumped outside of trenches. No general refuse being taken in. Large Bantam shovel is the only operable equipment. No cover provided. 3 Pfizer loads arriving daily.
- September 13, 1979: Observed refuse in standing water. Daily cover not provided. Inadequate spreading and compacting of commercial refuse. Insufficient operable equipment on site. Observed oil-tar liquids which were not permitted. Large backhoe stuck for 1½ weeks. Tim Maney said they had received no wastes for several weeks.
- November 27, 1979: One dozer runs, but it wouldn't start that day. No longer have track-mounted backhoe; must use small dragline, but need dozer to move it into place. One load of construction debris since last inspection, but not compacted or covered.
- March 21, 1980: Observed refuse in standing water. Daily cover not provided on previously deposited refuse in trench #3. Inadequate depth of cover in some areas.

These observations are further supported by photographs which were presented into evidence as Complainant's Group Exhibit #11. Despite the fact that Mike Maney testified that no sludge was accepted at said site after late May or early June (R.114, 120 and 125), the photographs in Complainant's Group Exhibit #11 and the investigation reports in Complainant's Group Exhibit #12 clearly establish that sludge was being accepted at least as late as August 8, 1979.

As briefed and argued, there are 3 possible arguments against liability which apply to some, or all, of the Respondents: (1) that it was technically impracticable to conform with the various statutes and rules; (2) that the Agency and the Attorney General were at least as responsible as the landowners in causing or allowing illegal acts to continue, and that the landowners should, therefore, be insulated from liability; and (3) that the partnership had terminated.

The Board finds that it was not impracticable to comply with the Act and Rules. Though there was testimony concerning the difficulty of compliance (R.133-6), alternative methods for compliance were available, including taking in more general refuse (R.82), obtaining a permit modification (R.82) and using an alternative method of covering (R.86). There is no competent testimony to show that the alternative method of covering, which worked satisfactorily at Mid-States Landfill, would not have worked at Metropolitan.

The second argument goes solely to the liability of the landowners; Kruse, H. Thomas, and G. Thomas. The argument is that since the Agency and the Attorney General were at least as responsible as the landowners for allowing or causing illegal acts to continue on said site, that the landowners should not be held liable. Respondents have cited no authority that imposes a duty upon the Agency or the Attorney General to utilize their powers in cases such as this, and the Board, therefore, does not find this to be a defense.

The third, and final, argument goes solely to the liability of Heil. The existence or non-existence of a partnership between Maney and Heil is touched upon several times in the course of the hearing, and much of the testimony points toward the non-existence of it (esp. R166-189). The record gives no indication that Heil personally participated in the management of the landfill, or even that he was aware of any irregularities in its operation prior to the filing of the compliant. However, Heil admitted his partnership involvement before the hearing (R.26) and failed to object to its inclusion in the record (R.29). Therefore, the Board finds that all evidence regarding the existence of the partnership is immaterial and will not be considered and that a partnership did exist.

The Board notes that certain of the specific dates of alleged violations do not appear to conform to the dates for which investigation reports were entered into evidence. However, the Board finds that given the ongoing nature of those violations and the failure to rebut violations on those dates, that each of the alleged violations did occur on each of the dates and during each of the periods of time alleged.

The Board finds further that the evidence as a whole supports the view that all Respondents made minimal efforts to come into compliance with Board Rules and the Act until the filing of the complaint, and that the laudatory efforts made since the filing have come too late. The regulatory scheme for protecting the environment can only be truly effective if compliance is maintained throughout the period of operation. After the fact compliance does little to remedy the inconveniences that affect citizens in the area such as Mrs. Virginia M. Smith who wrote to the Board to complain of the conditions she had to endure. For that reason, the Board finds that a civil penalty is required to aid enforcement of the Act and the Board's Solid Waste Regulations promulgated pursuant thereto. The Board has considered the factors contained in §33(c) of the Act in determining a reasonable penalty, including, but not limited to, the aggravating factor of the mishandling of wastes containing heavy metals. The Board finds that a penalty of \$2,000 with respect to Metropolitan, and of \$75 each with respect to L. Kruse, H. Thomas, and G. Thomas is one which will protect the vitality of the Act and the Board's regulations.

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


ORDER

1. The Respondents Mike Maney and Gene Heil, d/b/a Metropolitan Waste Company, a partnership, have violated Rules 301,302,304,305(a) and 310 of Chapter 7: Solid Waste Regulations and Section 21(b) of the Illinois Environmental Protection Act.
2. The Respondents Lucille E. Kruse, Harold Thomas and Gene Thomas have violated Rule 301 of Chapter 7: Solid Waste Regulations and Section 21(b) of the Illinois Environmental Protection Act.
3. That Respondents Mike Maney and Gene Heil, d/b/a Metropolitan Waste Company, a partnership, shall pay a penalty of \$2,000.
4. That Respondents Lucille E. Kruse, Harold Thomas and Gene Thomas should each pay a penalty of \$75.
5. That within 35 days these penalties shall be paid by certified check or money order payable to the State of Illinois, and sent to:

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

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of August, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board