

ILLINOIS POLLUTION CONTROL BOARD
August 7, 1980

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-262
)
ELGIN NATIONAL BANK, AS TRUSTEE)
UNDER TRUST NO. 893, AND)
VICTOR SARRO,*)
)
Respondents.)

ANNE K. MARKEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
THE COMPLAINANT.

VICTOR SARRO APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by N.E.Werner):

This matter comes before the Board on the October 4, 1977
Complaint brought by the Illinois Environmental Protection Agency
("Agency") which alleged that a solid waste management site ("site")
was operated without an Operating Permit from the Agency from
February 2, 1976 until October 4, 1977 in violation of Rule 202(a)
of Chapter 7: Solid Waste Regulations and Section 21(e) of the
Illinois Environmental Protection Act ("Act"). A hearing was held
on December 4, 1978. The parties filed a Stipulation and Proposal
for Settlement on July 10, 1980.

The property in question, a barren piece of land, is located
north of Larkin Avenue and west of Gale Street in Elgin, Kane
County, Illinois. (Stip. 2; R. 8).** Otter Creek, an intermittent
stream, flows across the property from north to south during
periods of heavy surface runoff. (Stip. 2).

*The parties to the Stipulation and Proposal for Settlement have
requested that the Board amend the original Complaint to substitute
Mr. Victor Sarro in place of Mr. Henry Santurro (who is now deceased)
as a Respondent. This motion is hereby granted and the caption of
the case has been modified to reflect this change.

The Elgin National Bank, as trustee under Trust No. 893, holds legal title to the site. (R. 5-6; Stip. 2). Trust No. 893 was established by Mr. Henry Santurro, who managed the property until his death in 1969. From 1969 until the present time, the property has been managed by Mr. Victor Sarro, a builder and contractor, who is the son-in-law of Mr. Henry Santurro. Mr. Victor Sarro, the husband of one of the beneficiaries of the trust, supervises the property on behalf of the bank and the beneficiaries. The beneficiaries of the trust are Mrs. Alice Santurro, Mrs. Mary Ann Sarro, and Mrs. Monica Westerman. Mrs. Alice Santurro is Victor Sarro's mother-in-law. Mrs. Mary Ann Sarro is Victor Sarro's wife. Mrs. Monica Westerman is Victor Sarro's sister-in-law. (R. 8).

Between February, 1976 and December, 1978, various unknown individuals disposed of demolition wastes and concrete on the property (i.e., "dumping" occurred). It is stipulated that this filling of the site has caused flooding problems on some of the neighboring lots. (Stip. 2).

At the hearing, Mr. Sarro indicated that he attempted to rectify the problems at the property by placing black dirt and other fill material on the site and using a bulldozer to level it out. (R. 8-9). A drainage ditch was also constructed to help alleviate the situation. (R. 10).

The parties have stipulated that it was Mr. Victor Sarro who initially contacted the Agency and acknowledged his responsibility for the activities on the site as its manager. (Stip. 3). At the hearing, the Assistant Attorney General indicated that Mr. Sarro had shown "diligence" in trying to take care of problems and had exercised "good faith" in dealing with the property. (R. 11).

Additionally, the Agency's Request for Admissions of Fact dated September 20, 1978 (which the Elgin National Bank admitted by its failure to respond) was received into evidence at the hearing. (R. 5-6; Stip. 3). This document indicated that the Elgin National Bank, as trustee under Trust No. 893, holds legal title to the real estate in question and states that the Respondent bank had not received a permit from the Agency authorizing the operation of a solid waste management site. (R. 5-6; Stip. 2). Thus, neither the Respondent bank nor Mr. Victor Sarro had the requisite Operating Permit from the Agency. (Stip. 2).

**The pages in the record have unfortunately been misnumbered in that there are two page 8's. The Board has taken official notice of this and hereby re-numbers the pages so that they are in consecutive, numerical order. Thus, the second page 8 becomes page 9, etc.

The proposed settlement agreement provides that Mr. Victor Sarro shall: (1) place 2 feet of appropriate final cover on the site (this has already been done and the Agency has inspected the final cover and has found it to be satisfactory) and (2) construct a drainage ditch to divert the Otter Creek flows from the filled area on the site and promptly install drainage tiles in this ditch. The parties have also proposed that, because of Mr. Sarro's diligence and good faith in resolving this matter, no penalty be assessed in this case. Additionally, the parties to the Stipulation have requested that the Board amend the original Complaint to substitute Mr. Victor Sarro in place of Mr. Henry Santurro as a Respondent.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act.

The Board hereby amends the original Complaint to substitute Mr. Victor Sarro in place of Mr. Henry Santurro as a Respondent. Because the evidence at the hearing indicates that the bank holds bare legal title to the site and merely acted in its limited role as a trustee, the Elgin National Bank is hereby dismissed as a Respondent in this case. The Board finds that Mr. Victor Sarro has violated Rule 202(a) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Act. The record indicates that Mr. Sarro already has come into substantial compliance with the proposed settlement agreement. Because of Mr. Sarro's diligence and good faith in correcting the environmental problems at this site, no penalty is assessed against him.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Elgin National Bank, as trustee under Trust No. 893, is hereby dismissed as a Respondent in this case.

2. The original Complaint is hereby amended to substitute Mr. Victor Sarro in place of Mr. Henry Santurro (who is now deceased) as a Respondent.

3. Mr. Victor Sarro has violated Rule 202(a) of Chapter 7: Solid Waste Regulations and Section 21(e) of the Illinois Environmental Protection Act.

4. Mr. Victor Sarro shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed July 10, 1980, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 7th day of August, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board