

ILLINOIS POLLUTION CONTROL BOARD

November 29, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
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 )  
 v. ) PCB 73-246  
 )  
 )  
 CITY OF MOUNT CARMEL, a municipal )  
 corporation and )  
 EMMETT DUNKEL )

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

A Complaint was filed on September 4, 1973 by the Environmental Protection Agency (hereinafter called EPA) against the City of Mount Carmel, a municipal corporation, and Emmett Dunkel, an employee of the City. The Complaint alleged violations of several sections of the Environmental Protection Act (hereinafter called Act) and violations of several sections of the Rules and Regulations For Refuse Disposal Sites (hereinafter called Rules) extending over a protracted period of time from July 1971 through February 1973.

Count I of the Complaint charged that Respondents at the refuse disposal site located within the Northwest Quarter of Section 5, Township 1 South, Range 12 West in Wabash County, Illinois violated Sections 21(a), (b), and (e) of the Act and violated Sections 3.04, 5.03, 5.06, 5.07(a) and (b), 5.10(a), (b), (c) and (d), and 5.12(c) of the Rules. Section 21(e) of the Act requires a permit, but that since July 1, 1970 the facilities had been operated without one. The other violations of the Act and Rules occurred on various specific dates (as clearly set out in the Complaint) from July 26, 1971 through January 11, 1973. The greatest number of dates set out for any Act or Rule violation was 24 specific dates.

Count II of the Complaint charged Respondent Mount Carmel at its disposal site located within Section 21, Range 12 West, Township 1 South, on the east side of the Wabash River levee in Wabash County, Illinois with violation of Sections 9(c) and 21(a), (b), and (c) of Act and Sections 3.04, 3.05, 4.03(a), 5.03, 5.06, 5.07(a) and (b), and 5.12(c) of the Rules. Section 21(e) of the Act was a continuing violation in that no permit had been issued subsequent to July 1, 1970 to operate the facilities. The other violations of the Act and Rules occurred

at various specific dates from July 28, 1971 through January 11, 1973, as set out in the Complaint.

Count III of the Complaint alleged the Respondent, Mount Carmel, at its disposal facilities located within Section 21, Range 12 West, Township 1 South, on the west side of the Wabash River levee in Wabash County, Illinois violated Sections 9(c) and 21(a), (b) and (c) of the Act and Sections 3.04, 3.05, 4.03(a), 5.03, 5.06, 5.07(a) and (b), and 5.12(c) of the Rules. Section 21(e) of the Act was a continuing violation in that no permit had been obtained for operation subsequent to July 1, 1970. The other violations of the Act and Rules occurred at various specific dates from July 28, 1971 through January 11, 1973, as set out in the Complaint.

Count IV of the Complaint charged that Respondent Mount Carmel at its disposal facility located within West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 22, Township 1 North, Range 12 West in the Wabash County, Illinois violated Sections 21(b) and (e) of the Act and Sections 5.03, 5.04, 5.06, 5.07(a) and 5.12(c) of the Rules. Section 21(e) of the Act was violated in that a permit issued to Respondent included certain conditions and Mount Carmel had violated condition 7 of those standard permit conditions. The other violations of the Act and Rules occurred at various specific dates from April 5, 1972 through February 7, 1973, as set out in the Complaint.

A hearing was held on August 31, 1973, and a Stipulation of Facts was made part of that hearing record. Mr. Dale R. Turner, Assistant Attorney General, appeared on behalf of Complainant. Mr. Leonard M. Koger, Jr., City Attorney, appeared for Respondent City of Mt. Carmel; Respondent Emmett Dunkel was not represented. In the Stipulation of Facts, Mount Carmel admitted the violations of the Act and Rules as set out in Counts I, II, III and IV of the Complaint and as indicated above. A proposed order was suggested by the EPA which included a cease and desist order, a compliance program, dismissal of the action as to Respondent Dunkel, and payment of a \$500 penalty by the City of Mount Carmel.

The Stipulation of Facts indicates that violations have been numerous, of long standing, and that compliance cannot be achieved until sometime in 1974. Although the inaction and indifference shown here by Mount Carmel city officials is censured by this Board, we do not believe the innocent citizenry should be made to suffer for their municipal shortcomings. Furthermore, where parties have agreed to the disposition of the case, and the proposal is reasonable, resulting in the abatement of future pollution problems, we are inclined to accept the Stipulation of Facts and enter our Order accordingly. See EPA v. Texaco, #72-98, 4 PCB 551, 553 (May 23, 1972).

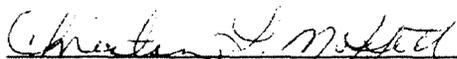
This opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

It is the Order of the Pollution Control Board that:

- (1) Respondent Emmett Dunkel be dismissed as a party to this action.
- (2) Respondent Mount Carmel cease and desist from the violations of the Act and Rules as set out in this opinion.
- (3) Respondent carry out a compliance program in accordance with the suggested compliance program submitted in the Stipulation of Facts. Respondent must report to the Agency every sixty days on its progress until its program of compliance is completed.
- (4) Compliance must be completed by July 1, 1974.
- (5) City of Mount Carmel shall pay a penalty in the amount of \$500.00. Payment shall be in the form of certified check or money order payable to the State of Illinois at Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois. Payment shall be due within 90 days after the adopting of this Opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24<sup>th</sup> day of November, 1973, by a vote of 5 to 0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board